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THE HISTORY OF THE

AMERICAN PEOPLE

FROM THE FIRST SETTLEMENTS

TO THE PRESENT TIME

IN TWO VOLUMES

BY J. W. FULTON

AND J. K. KENDRICK

NEW YORK

ROBERT K. KENDRICK

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BRITTON.

Containing the Antient

Pleas of the Crown,

Translated ; and Illustrated

WITH

REFERENCES, NOTES,

AND

ANTIENT RECORDS.

By ROBERT KELHAM.

LONDON:

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ВРИТЯНО

Containing the Ancient

BIBLIOTHECA
REGIA
MONACENSIS.

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II T I V

REPLIES, NOTES,

Cf. M. A.

PREFACE.

THE established Character and Reputation of *Britton* will, it is hoped, render any Apology needless for an Attempt to translate into English any Part of a Work, which, though of great authority among the most Eminent in the Profession of the Law for several successive Ages, has been hitherto published in a Language so antiquated and grown into Disuse, as to be scarcely intelligible to many Readers.

P R E F A C E.

The Author was descended from the Family of the *Bretons* which had flourished at *Wichingham* (a) in the County of *Norfolk* for several Generations.

It appears from Sir *Wm. Dugdale*, that he was first one of the Justices of the Common (b) Bench towards the later End of the reign of *Henry* the third, afterwards a Justice of the Court of King's (c) Bench, and had likewise been one of the Justices (d) in Eyre. He was also a Doctor (e) of Laws, and Bishop of *Hereford*; and died in the Year 1275.

Lord C. J. *Coke* in the Preface to his 10th. Report, and Mr. *Lambard*

(a) Spelman's *Icenia*, p. 151. (b) *Dug. Orig. Chron. Ser.* p. 23. (c) *Id.* p. 22. (d) *Id.* p. 23. (e) *Godwin de Præful Ang. inter Episcopos Herefordienses* 43.

P R E F A C E.

in his *Archeion*, say that *Britton* was singularly (*f*) learned in the Laws of the Realm, and 'tis presumed there can be no better Evidence of this, than that of his Book being published at the Command, (*g*) and in the Name, of so great and politick a King, as *Edward* the first.

Sir *Wm. Dugdale* (*b*) calls it by way of Eminence *King Edward's* Book of Laws——and Bishop (*i*) *Nicholson*, the excellent Manual.

It was wrote in the true French of those times for the better publication (*k*) of the Laws which were then extant in Latin, by *Glanvil*

(*f*) Pref. 10. Co. Lamb. *Archeion*, p. 37. (*g*) Year Book 35. Hen. 6. p. 42. a. Selden. *Disertat. ad Flet.* p. 461. Notes on Hengham p. 129. (*b*) Dug. Or. p. 19. (*i*) *Nicholson's* Eng. Hist. Libr. 8 Ed. Part 3. p. 157. (*k*) Lamb. Arch. p. 60.

P R E F A C E.

and *Bracton*, and is the only Compendium of the Law as it stood in the beginning of the Reign of King *Edward* the first ; for altho' *Gilbert de Thornton* C. J. of the K. B. in the 20th Year of that King's Reign, abridged (*l*) *Bracton*, yet it never was made publick, and the only Manuscript which remains of it, is very imperfect.

I have at present ventured to publish only so much of my Translation of *Britton*, as comprehends his Pleas of the Crown, referring in the Margin to Sir *Wm. Stamford*, Sir *Edward Coke*, Lord C. J. *Hale*, and Serjeant *Hawkins*, who have so learnedly handled this Branch of the

(*l*) Selden. Dissertat. ad Flet. p. 456. 459.

P R E F A C E.

Law ; and where I have found the Law altered since *Britton* wrote, such Alterations are pointed out by a Note from some of the above Authors.

Those almost cotemporary Writers with our author, *Glanvil*, *Bracton*, *Fleta*, and the *Mirror*, are likewise referred to, where they treat upon the same subject Matter ; and I have subjoined several Notes, and in them inserted several very antient Records of Cases in the Reigns of King *John*, *Henry* the third, and *Edward* the first ; for most of which I stand indebted to the very learned Editor of the first Book of *Fleta*, whose example I have followed in confining my Publication to what concerns the Pleas of the Crown : but
it

P R E F A C E.

it were much to be wished that the World was obliged with the whole of *Fleta* by the same Editor, if the Want of such a public Benefit was not abundantly recompenced by the Service which the Public derives from the high Office, in which that learned Editor now presides ; and in which he does honour to a Bench of Justice. As to the rest of the Records, some of them are taken from the Notes on *Hale's* Pleas of the Crown, others from Manuscripts never yet published, as tending to illustrate *Britton*, and the Law as it stood in his Time.

To render our Author more distinct and perspicuous, the Chapters are divided into Sections, as is done in *Bracton* and *Fleta*, and
at

P R E F A C E.

at the End is given a Table of Contents of the whole.

With regard to the Translation, I have endeavoured to keep as near to the Original as I could, but as the Obscurity of *Britton's* Dialect gives me too much reason to apprehend many Imperfections in it, the utmost I can hope for is, that what is here faintly and in Part attempted may meet with a favourable reception till some able Hand compleats the whole of such a Work.

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CONTENTS.

		cap.	page
THE Introduction	—		I
Of Coroners	—	I	II
Of Eyres	—	2	26
Of The Articles	—	3	32
Of Counterfeiters of the Seals, } and of the Coin.	—	4	33
Of Homicides	—	5	47
Of Murder	—	6	52
Of Mischance	—	7	56
Of Treason	—	8	57
Of Arsons	—	9	60
Of Burglars	—	10	61
Of Prisons	—	11	62
Of Outlaws	—	12	70
Of Inlawry, or being restored } to the Law	—	13	76
Of Rape	—	14	80
Of Larcenies	—	14	81
Of Abjurations	—	16	89
Of Treasure Trove, Wrecks, } Waifs, Estrays, &c.	—	17	95
Of the Rights, or Prerogative } of the King.	—	18	98
Of Franchises	—	19	105
Of Various Wrongs	—	20	108
Of the King's Officers	—	21	118
Of Appeals	—	22	133
Of Appeals of Homicide	—	24	147
Of Appeals of Robberies and } Larcenies	—	24	155
Of Appeals of Mayhems	—	25	164

RECORDS inserted in the Notes.

Year					Page
—	—	K. Richard the first	—	—	53
2	—	John	—	—	152
4	—	John	—	—	75
5	—	John	—	—	74
10	—	John	—	—	60
15	—	John	—	—	94
5	—	Henry the third		36, 40,	50
10	—	Henry the third		—	46
25	—	Henry the third		18,	20
32	—	Henry the third		—	54
45	—	Henry the third		—	55
56	—	Henry the third		—	42
2	& 3	Edward the first		—	93
7	& 8	Edward the first		—	165
14	—	Edward the first		—	42
30	—	Edward the first		—	47
3	—	Edward the third		—	71

Britton.

Sect. I. (1) **E**DWARD, * by the [Folio 1. a.]
Grace of God, King of * 1 Inf. 7. b.
England, and (2) Lord of *Ireland*. To all 2 Inf. — 29 — 39
his 156 — 536 — 573

(1) EDWARD (the first) this is the *Edward* who is so frequently stiled in our Law Books, The English Justinian, The Mirror of Princes, The Great, The Wise King.

Lord Chief Justice *Hale* says, That in his Time the Law *Quasi per Saltum*, obtained a very great perfection, and partly by the Learning and Experience of his Judges (of which our Author was one) and partly by his own wise Interposition, he silently, and without Noise, abrogated many ill and inconvenient Usages, both in his Courts of Justice and in the Country; he rectified and set in Order the Method of collecting his Revenue in the Exchequer, and removed obsolete and illeivable Parts thereof out of Charge, and by the Statutes of *West. 1. West. 2. Glou. and West. 3.* and of *Articuli Super Chartas*, he did remove, almost all that was either grievous or impractical out of the Law and the Course of its Administration, and substituted such apt, short, pithy, and effectual Remedies and Provisions, as by the Length of Time and Experience had of their Conveniences, have stood ever since, without any great Alteration, and now are as it were incorporated into, and become a Part of the Common Law itself; so that the Mark or Epocha we are to take for the true Stating of the Law of *England*, what it is, is to be considered stated and estimated from what it was when this King left it. *Hale's Hist. Com. Law. 163, 164.*

(2) LORD OF IRELAND. In the 33 *Hen. 8.* the Parliament confirmed an Act passed in Ireland for erecting that Island into

faithful and liege (3) People, and his Subjects of *England* and *Ireland*, Peace and Grace of Salvation.

† West. i. 3 Ed.
i. c. i.
2 Inst. 161.
Brac. i. b. f. 6.
Fle. 45. c. 29.
f. i.
Mir. c. i. f. i.
p. 7.

II. Desiring † Peace among the People, who by God's Permission are under our Protection (which Peace cannot be duly maintained without Laws) we have caused such Laws as have heretofore been used in our Realm to be reduced into Writing || according to that which is here ordained.

|| Mir. c. i. f. 3.
p. 11.

† 1 In. 109. b.
2 In. 97—530.
Brac. i. b. f. 7.
—34. f. 3.
Fle. 17. f. 9.
Mir. c. i. f. 2.
p. 9.—c. 2. f. 3.
p. 10.

III. And our Will and Command is, That they be so used and observed in all Points throughout *England* and *Ireland*, saving to us † at all Times the Power of repealing, annulling, abridging, and amending, what we shall see expedient, with the Assent of our Earls, and our Barons, and

into a Kingdom; and on the 23d of *January* 1541, he was proclaimed King of *Ireland* by the Parliament of both Kingdoms. *Rap. Hist. of England. Sandford's Genealogi. Hist. of England, vit. H. 8.*

Though the Kings of *Ireland* were until the above Statute stiled by the Name of Lord of *Ireland*, yet was he Supremus and absolute Dominus, and had Royal Dominion and Authority. 4 *Inst.* 357. 7 *Co.* 9. b. *Calvin's Case.*

King *Edward* likewise stiled himself Duke of *Acquitain*, but as his Subjects in that Dutchy were not intirely governed by the Laws of *England*, he leaves out that Part of his Title, and addresses himself only to his Subjects of *England* and *Ireland*.

TO ALL. This or the like particular Direction, was used by the King's Progenitors. See *Mag. Cha.* 2 *Inst.* page 1.

(3) LIEGE (*leaus*) compare this with the Oath of Allegiance. p. 19. b. where the same Expression is made use of; or it may signify lawful, *leauement* and *lealment*, being made use of by our Author, p. 9. b. and 175. a, in that Sense.

and others of our Council ; saving also to all Persons such Customs as have been used Time out of Mind, so as such Customs are not contrary * to Law.

IV. First, with Regard to ourselves and our Court, our Pleasure is, That inasmuch as we are not able in † our own proper (5) person to hear and determine all the Complaints of our Subjects, we have distributed our Charge into several Portions, as is here ordained.

V. We will that our own || Jurisdiction be (6) superior to all the Jurisdictions in our Realm ; so that in all Kinds of Felonies, Trespasses, Contracts, and in all Manner of other Actions personal or real we have Power to give, and cause to be given such Judgment as the Case requires (without any other Process) whenever we know the true Right judicially.

B 2

VI

* 1 In. 110. b.
—140.
Brac. 1. f. 2.—
2. f. 2.
Mir. c. 5. f. 1.
p. 281.
† 4 In. 70.
Brac. 107. f. 1.
—108. f. 1.
Fle. 18. f. 16.
Mir. c. 2. f. 3.
p. 118. —c. 2.
f. 25. p. 151.
[f. 1. b.]
—c. 4.
f. 4. p. 234.
Lamb. Arch.
p. 36.
|| 4 In. Proem.
Brac. 108. f. 1.
—400. c. 2. f. 1.
Fle. 16. c. 17.
f. 3, &c.—429.
c. 37. f. 1. 2,
Mir. c. 1. f. 3,
p. 11. —c. 4.
f. 1. p. 231. f. 2.
p. 223, 224.

(4) REDUCED INTO WRITING. See Note 1st.

(5) PROPER PERSON. The Kings of *England* originally used to sit in Person in Court, as *H. 3d.* sat several Times in Judicature. *Mad. Hist. Exch.* p. 553. *Seld. Notes on Fortescue* p. 4.

But now it is held, That the King himself, though he be trusted with the whole executive Power of the Law, cannot sit in Judgment in any Court ; but his Justice and the Laws must be administered according to the Power committed and distributed to his several Courts of Justice, and the Judgment must be. Therefore it is considered by the Court. *Bac. Abr.* p. 553.

(6) SUPERIOR. Hence it is that the King being *Justitiæ fons & Origo.* the Head and Fountain of Justice, that Appeals in Cases of Failure of Justice are made to him himself. *Dug. Or.* p. 20.

* 2 In. 462. 548.
&c.

4 In. 130.
10 Co. 69. b.
Fle. 66. f. 2.
2 Haw. P. C.
c. 4. f. 2.
2 Ha. P. C.
p. 7.

VI. Likewise the (7) Steward * of our Household shall represent us within the (8) Verge of our Palace; and his office shall extend to the Hearing and Determining the Presentments of the Articles of our Crown, when we shall see good.

† 1 In. 293.
2 In. 210.
4. In. 184. 211.
Brac. 105. b. f.
2.—108. f. 2.
Fle. 66. f. 10.
Mir. c. 4. f. 4.
p. 234. f. 20. p.
267.

‖ 1 In. 141. b.
4 In. 211. 349.
3. 1.

Brac. 395. b. f. 2.

VII. And further, our Pleasure is, that Justices † (9) Itinerant be assigned to hear, and determine the same Articles in every County, and Franchise, every seven Years; and that they shall have the like Power as our Chief Justices of ‖ *Ireland* and (10) *Chester* have.

VIII. We ordain also, that the Earl of *Norfolk* (11) shall, either by himself, or his Deputy

(7) THE STEWARD. Whatever might be the original Institution of these great Offices of Steward and Marshall, or the Nature of their Authority, It is certain their Jurisdiction is at present declared, limited and restrained by certain Acts of Parliament, before the making whereof, we have scarce any Thing memorable on Record, concerning this Matter. 2 *Haw. Pl. C.* p. 10. f. 3.

(8) VERGE. In Latin *Virga* & *Virga'a*, and as *Fleta* tells us. is called so from the Virga or Wand delivered to the Officer of this Court to be carried before the King. *Fleta* l. 2. c. 4. . f. 2.

(9) ITINERANT. So called in respect that the Justices residing at *West.* were stiled Justiciarii Residentes. 1 *Inst.* 293. a.

(10) CHESTER. See the Stat. 2 & 3 *Edw. VI.* c. 28. f. 2. & 43 *El. c.* 15. f. 3. in which he is stiled High Justice, and 4 *Inst.* 211, 212.

(11) NORFOLK. *Roger Bigot*, was at this Time Earl of *Norfolk* and Marshal of *England*. The Office of Earl Marshall is now in the most noble Family of the *Howards*, and came into it by the Marriage of Sir *Robert Howard*, with *Margaret*, one of the Daughters and Co-heirs of *Thomas Mowbray*, Duke of *Norfolk*, and Earl Marshal. *Mills Ca. Honour*, p. 520.

Deputy (being a Knight) be attendant upon us and our Steward to execute † our Commands and the Attachments, and Executions of our Judgments, and those of our Steward, throughout the Verge of our Palace, so long as he shall hold the Office of Marshal.

† 4 In. 130.

* 1 In. 71. b.
2 In. 22. 23.
166. 255. 551.
4 In. 70. 71.
Gl. l. 1. c. 3—
1. 10. c. 18.

IX. With respect to the * Justices (12) assigned to follow and represent us where-soever we shall be in *England*; our Pleasure is, that the Cognizance of amending

Brac. 105. f. 2.
3.—108. f. 2.
Fle. 66. c. 2. f.
5.
[f. 2. a.]
Mir. c. 1. f. 4.
p. 21.—c. 4. f.
4. p. 2. 34. 235.
2 Haw. P. C.
c. 3.
2 Hal. Pl. C.

B 3

er-

(12) JUSTICES ASSIGNED TO FOLLOW US, i. e. the Justices of the Kings-Bench.

The whole Jurisdiction which is now distributed among the several Courts of *Westminster-Hall*, seems in the first Reigns after the Conquest to have been lodged in one Court, commonly called the King's Court, wherein Justice is said to have been administered sometime by the King himself in Person, and sometime by the High Justicier, who was an Officer of very great Authority, and used in the King's Absence beyond Sea to govern the Realm as Vice-Roy.

Out of this Court, the Court of C. P. and Ex. seem to have been derived sometime before the Making of the Stat. of Magna Charta; the former of which Courts properly determines Pleas merely Civil, and the latter, those relating to the Revenue of the Crown; and after the Erection of these Courts, the supreme Court seems by Degrees to have obtained the Name of the Court of King's-Bench, and hath always retained a supreme Jurisdiction in all criminal Matters; and also in certain personal Causes, and is still supposed to have always the King himself in Person sitting in it. 2 Haw. P. C. c. 3.

In ancient Times this Court was removeable, and followed the King's Court, therefore original Writs returnable in the King's-Bench, are before us wheresoever we shall be in *England*. 2 Inst. 22.

It is said, this Court and the Chancery ceased to be ambulatory in the 4 Ed. 3. 2 Inst. 544.

* 4 In. 70. 71. erroneous * Judgments, and determining Appeals, and other Trespasses committed against our Peace, and against (13) our Jurisdiction, shall belong to them; and that their Jurisdiction and Records shall extend so far as they are impowered by our Writs.

† Art. Sup. Ch. c. 3. 33 H. 8. c. 12. 2 In. 549. 550. 2 Haw. Pl. c. 9. f. 15. to 18. 2 Hal. Pl. C. p. 54. X. In our Palace, let there be a Coroner † to execute the Business of our Crown throughout the Verge, and wheresoever we shall be or come within our Realm; and that he with others be assigned to assay all Weights and Measures in our Verge throughout our Realm, according to our Standards; and let neither of these two Officers omit doing their Duty, by Reason of any Franchise, except such Franchise has been granted in Fee Farm, or in Alms by us, or our Predecessors.

|| 1 In. 163 2 In. 174. &c. 558. &c. Brac. 105. b. 108. f. 1. Fle. 66. f. 12. Mir. c. 1. f. 2. p. 8. &c. XI. In every County let there be a || Sheriff intendant on our Commands, and those of our Justices aforesaid who have Record of Pleas pleaded before them by our Writs; and under the Sheriffs let there be Hundredors, Serjeants and Beadles to be attendant on them.

XII. In every County, let there be Coroners chosen for keeping the Pleas of our Peace, as shall be shewn in the Chapter of their Office, and let them have Record of things concerning their Office.

XIII.

(13) AGAINST OUR JURISDICTION. That is, to grant Prohibitions. 4 Inst. 70.

XIII. Moreover our Will is, that there be Justices constantly residing (14) at *Westminster*, or such other Place (15) as we shall ordain, to determine such common * Pleas (16) as we shall give them cognizance of (17) by our Writs; and of such Pleas let them make Record.

XIV. Also our Will is, that at our (18) Exchequers † at *Westminster*, and elsewhere, our Treasurers and our Barons (19) there have Jurisdiction and Record of Things

B 4

which

(14) RESIDING. The Justices of the Common-Pleas are here called Justiciarii Residentes, to distinguish them from the Justices of the King's-Bench, who then followed the King. 2 *Inst.* 22.

(15) OR SUCH OTHER PLACE. In the 11 *Ed.* 1. the Com. Bench, by special Command, was removed to *Shrewsbury*, upon Occasion of the King's being at that Time engaged in his Expedition against *Wales*. *Mad. Hist. Exc.* p. 552.

(16) COMMON-PLEAS. i. e. Common or Civil, not Pleas of the Crown, and called so, not in respect of the Persons, but in respect of the Quality of the Pleas. 2 *Inst.* 22. 4 *Inst.* 99.

(17) BY OUR WRIT. In certain Cases this Court may hold Plea by Bill, without any Writ in the Chancery, as for or against any Officer, Minister, or privileged Person of this Court; and may upon a Suggestion grant Prohibitions. 4 *Inst.* 99.

(18) EXCHEQUER. *Glanvil* and *Bracton* do but barely mention this Court; the first in L. 7. c. 10. and the other in L. 3. c. 1. p. 116. b.

(19) BARONS. Of ancient Times they were Barons and Peers of the Realm, 4 *Inst.* 113. *Dug. Or.* p. 51. And the Earls and Barons of the Realm were to be amerced only by the Barons in the Exchequer, or before the King himself. *Bracton.* p. 116. b. 4 *Inst.* 113.

(20) DEBTS. Here Debts are taken for all Manner of Dues due to the King. 4 *Inst.* 110.

[f. 2. b.]
* 1 *In.* 71. 76.
M. Char. c. 11.
2 *In.* 22. 108.
114.
4. *In.* 99.
Gl. 1. 1. c. 1.
1. 2. c. 6. l. 11.
c. 1.
Brac. 105. f. 2.
108. f. 2.
Fle. 66. c. 2. f.
7.—85. c. 34.
Mir. c. 4. f. 4.
p. 234. 5.—c. 5.
f. 2. p. 311.
† 2 *In.* 551.
4 *In.* 103.
Gl. 1. 7. c. 10.
Brac. 116. b.
Fle. 66. c. 2. f.
6.—81. c. 25.—
82. c. 26. 27.
&c.
Mir. c. 1. f. 3.
p. 14.—f. 14.
p. 106. c. 4. f. 4.
p. 235.

† 2 In. 551.
4 In. 111.

which concern their Office; and to hear † and determine all Causes relating to our (20) Debts, and also our (21) Fees, and whatsoever is incident thereto, without which such Matter could not be tryed; and that they likewise have Cognizance of Debts owing to our Debtors, by Means whereof we may the more speedily recover our own.

§ 1 In. 263.
2 In. 424. &c.
4 In. 158.
Gl. 1. 13. c. 32.
33. &c.
Bra. 105. b. f. 2.
108. f. 2.
Fle. 66. f. 6.
Mir. c. 2. f. 25.
2 Haw. P. C.

XV. Our Will also is, that Justices be assigned in every County to have Cognizance in such Causes, and other Matters as we shall appoint them by our Letters (22) Patents of petites § Affizes, and that they make Inrollment thereof.

c. 7.
2 Ha. P. C. p. 39.
* St. Giou. c. 9.
—2 In. 315. 316.
4 In. 168.
Brac. 105. b. f. 2.
—108. f. 2.
Fle. 66. l. 8.
Mir. c. 4. f. 4.
p. 236.
St. Pl. C. 56. b.
2 Haw. P. C. c. 6.
2 Hal. P. C.
p. 32.

XVI. Let Justices also be appointed to deliver the * Goals (23) in every County, (24) one Day in every pleadable Week, while they find any Thing to do; and let them likewise record the Pleas brought judicially before them.

XVII.

(21) FEES. Here the Tenures of the King are expressed,
4 Inst. 110.

(22) LETTERS PATENT. See the Form of them.
4 Inst. 158. Dug. Or. 53.

(23) GOALS. See the Form of the Commission.
4 Inst. 168.

(24) PLEADABLE. This Passage will be illustrated by comparing it with another of the same Import in p. 18. & 134. a. where Britton says, *En temps pleadable*, and not simply, *pleadable*, i. e. in such Seasons of the Year as the Justices usually went to deliver the Goals, and not in prohibited Times, which the Church, without Dispensation, did not allow of. *Spel. Or. Terms*, p. 96.

XVII. But notwithstanding we have granted to our Justices the Power of Inrol-
ing Pleas pleaded before them, yet we will [f. 3. a.]
not that they avail themselves of their Re-
cords when they have done amiss, nor that
they may (25) erase their Rolls, nor amend
them, nor record contrary to their Inrolment;
for our Pleasure is, that the Power † of our
Justices be limited in this Manner, that
they go not beyond the Articles of our Writs,
nor of the Presentments of Jurors, nor of
the Complaints entered before them, save that
they may have Cognizance of Vouchers to
Warranty, and of such other incidental
Matters as without which the original Causes
could never be determined.

† Brac. 108. b.
f. 3.
Mir. c. 4. f. 4.
p. 234.

XVIII. And we command all our Jus-
tices in general, that none of them take up-
on them the Power of amending || any
false Judgment of our Justices, except the
Justices who follow us and our Court,
who are appointed by us for that Purpose,
or ‡ ourselves, or our (26) Council; for
this we in a special Manner reserve to our
own Jurisdiction.

|| 4. In. 71.
Bra. 108. b. f. 4.
Mir. c. 4. f. 4.
p. 235.

‡ 1 In. 110.
4 In. 2.

XIX.

(25) ERASE. This Ordinance of *Ed. 1.* was so strictly
observed, that when *J. C. Ingham.* in his Reign, moved
with Compassion for the Circumstances of a poor Man,
who was fined 13s. 4d. erased the Record, and made it
6s. 8d. he was fined 800 Marks. 4 *In.* 255. *Bat. Abr.*
p. 89.

(26) COUNCEL. The great Council in Parliament,
or before the Chancellor, Treasurer, Keeper of the Privy
Seal, Justices of the one Bench, and the other, Chancellor
and Barons of the Exchequer, who usually met in
Chancery upon such Occasions, under the Style of Con-
cilium. 1 *In.* 110. a. *Hal. P. C.* p. 421.

XIX. We forbid all our Coroners and Justices, and all others to whom we have given Authority of Record, that none of them, except our Steward and our Justices of *Ireland* and of *Chester*, without our Leave, * substitute (27) another in his Place, to do any Act of which he himself ought to make a Record; and if any Thing be done before such Substitutes, we will that it be void, and of no Force, though it should be of Abjuration, or Outlawry.

* Brac. 108. b.
f. 4.
Fle. 19. f. 31.

[f. 3. b.]

† 1 In. 168.

2 In. 69, &c.
190, &c.

4 In. c. 53. to
58.

Gl. l. 1. c. 1, to

4. l. 9. c. 10.

l. 12. c. 9.

Brac. 105. c. 7.

f. 1, 2.

Fle. 66 f. 12, 13.

Mir. c. 1. f. 3.

p. 12, 13. c. 4.

f. 4. p. 235.

|| 1 Inf. 58.

4 In. 266, to 268.

† Fle. c. 2. f. 13.

p. 66.

XX. We will also, that in Counties, † Hundreds, (28) and in the Courts of every Freeholder, the Courts be held by the Suiters; || the like in Cities, ‡ Boroughs, and Franchises, and in the Courts of the Sheriffs, or in View of Franckpledge, and in other Courts.

C H A P.

(27) SUBSTITUTE ANOTHER. For if this were allowed, Justice might be perverted, the Trust and Confidence placed in the Coroner abused, the County prejudiced, and the duly elected Officer virtually removed. *Umfrev. Lex. Cor.* p. 157.

(28) COUNTY'S, HUNDREDS, AND IN THE COURTS OF EVERY FREEHOLDER, i. e. the County Courts, Hundred Courts, and Courts Baron.

Why *Britton* in this Chapter, in which he treats of the Jurisdiction of Courts, from the King's own Tribunal to the Court Baron, makes no Mention of the Court of Admiralty, the Constable's Court, or of the Chancery. See *Lamb Ar.* p. 40.

CHAP. I.
Of CORONERS.

Sect. I. **A**ND because our Will is, that Coroners * shall in every County be the principal Conservators of our Peace, to bear record of the † Pleas of our Crown, and of their Views, and of Abjurations, and Outlawries,

II. We ordain, that they be chosen in the Manner prescribed in our Statutes § concerning their Election; and when chosen, our Pleasure is, that in full County they take the Oath before the Sheriff, that they will lawfully, and without demanding any (1) Reward || make their Inquests and Inrollments, and do whatsoever belongs to the Office of a Coroner.

III. Also, it is our Pleasure, that as soon as any Felony or Misadventure has happened, or Treasure be found designedly concealed under Ground, or in case of the Rape ‡ of Women, or of the breaking of

OUR † St. P. C. 51. b.

(1) ANY REWARD. By Stat. 3. H. 7. c. 1. he is intituled to 13s. 4d. and by 25 G. 2. c. 29. to 20s. and 9d. per Mile for every Inquisition not taken upon View of a Body dying in a Gaol or Prison. See *Umfrev. Intr. Lex. Cor.* p. 5.

* Brac. 121. c. 5.
f. 1,
Fle. 36. f. 1.
Mir. c. 1. f. 13,
p. 45.

[F. 4. a.]

† 4 Ed. 1.
Brac. 121. b.
Fle. 36. f. 2.
Mir. c. 1. f. 13.
p. 47.

§ Mir. c. 1. f. 13.
p. 47.

our Prison, or of a Man wounded almost to Death, or of other Accident happening, that the Coroner, as soon as ever he has Notice * of it, issue his Precept to the Sheriff, or the Bailiff of the Place where the Accident happened, that at a certain Day he cause to appear before him at the Place where the Accident happened, the four adjacent (2) Townships, and more if need be, by whom he may inquire of the Truth of the Casualty; and when he is come, let him swear the Inquests upon the Holy Evangelists, that they will speak the Truth as to such † Articles as he shall give them in charge, and demand of them on our Behalf; for in this Case, and in the Courts of the Sheriff, and at View of Frank Pledge, and in the Office of our Escheators, and in our Presence before our Steward, and in the Eyer of our Justices, it is our Pleasure, that the Inquest do proceed though our Writ (3) come § not.

IV. Afterwards, let the Coroner and the Jurors with him go and view the Body, and

(2) FOUR ADJACENT TOWNSHIPS. The Inquisition is good, though it should appear to be taken upon the Oaths of honest and lawful Men of the County, and not by the Oaths of Persons of the four next adjacent Towns; for this will be intended. 6. Vin. 248.

(3) THOUGH OUR WRIT COME NOT. This the Mirror tells us is for the Conservation of the Peace, and of the King's Right, and of the public Weal. Mir. c. 1. f. 13, p. 47. Umfre. Lex. Cor. Intr. p. 43.

and the Wounds and Blows, or if any one hath been strangled or scalded, or by other Violence, come to his End; and immediately after that View, let the Body be interred.

V. And if the Coroner find the Body interred || before the taking such View, let him make an Inrollment thereof, yet not to neglect on any Account the having the Body taken up (4) again, and viewed openly, and this by the * Inquest.

|| Brac. 121. f. 6.
Fle. 37. f. 8.
Mir. c. 1. f. 13.
p. 46.
St. P. C. 51.

* 2 In. 136.
Mir. c. 1. f. 13.
p. 46.

VI. With respect to those who were summoned, and came not to the Coroner's Inquest, let them be amerced at the coming of our Justices at the next Assizes in that County, if such Defaults be found entered in the Roll of the Coroner; for neither our Coroners, nor our Escheators, nor any simple * Inquirors, (5) have Authority to amerce any one for any Default.

* 2 In. 136.

VII. When the Coroner has got a sufficient Number, by whom he may make his Inquests, let him immediately inquire, † whether such Person was killed by Felony,

† Brac. 121. b.
f. 2.
Fle. 36. f. 2.
Mir. c. 1. f. 13.
p. 47.

OR

(4) THE BODY TAKEN UP AGAIN. See Note on the Words (first found) *Brit. 6. a. Umfrev. Lex. Cor.* p. 214.

(5) SIMPLE INQUIROR. Before the Stat. of *Marl. 5. H. 3. 1267.* Escheators, Sheriffs, Coroners, Special Justices of Assize, and Justices of Oyer and Terminer in special Cases (whom our Author here calls, Simple Inquirors) would upon the common Summons amerce such as made Default, which Power the above Statute took away from them, and gave it to the Justices of Special Assize. *2 Inst. 136.*

(6)

[f. 4. b.]

§ Brac. 121. b.
f. 2.

Fle. 36. f. 2.

|| 2 In. 182, 183.

Brac. ut. Sup.

Fle. ut. Sup.

Mir. c. 1. f. 13.

p. 47, 48.

* Fle. 37. f. 3.

Mir. c. 1. f. 13.

p. 101.

or Misadventure; and if by Felony, whether the Felony was committed in or out of a House, or whether in a Tavern, or at a Wrestling Match, or any other publick Meeting? Then let it be inquired, who were present § at the Fact, Old and Young, Males and Females; and of those, which of them were guilty of the Fact, which of (6) aiding, || and of the Force, and of commanding, or of consenting, or of the (7) receiving them, knowing them to be Felons. And if the Coroner on the first Inquiry suspect Concealment of the Truth, or that there may be Occasion for a further Inquiry, and that by (8) others, let Inquiry be made again and again; * but let him not on Account of any Contrariety in the Verdicts change or alter his Inrollment in any Point. And further, he must inquire

(6) AID FORCE COMMAND. &c. See the Import of these Words. 2 Inst. 182.

(7) OR OF RECEIVING THEM. If Britton means, that the Coroner may inquire of the Receivers of Murderers after the Fact, he does not seem to be warranted herein, either by ancient or modern Authors; for Bracton and Fleta attribute no such Power to the Coroner. And it has been resolved, that an Indictment against J. S. before a Coroner for having received and comforted one who had been guilty of a Murder, is void; for he has neither by the common Law, nor by the Stat. 4 Ed. 1. or 3 H. 7. Power to inquire of any Accessories to a Felony after the Fact, he having nothing to do with any but those who some Way or other caused the Parties Death. 2 Haw. P. C. p. 48. f. 26.

(8) BY OTHERS. i. e. By other Evidence, not by other Jurors. See Umfreville's Note on this Passage, in his Intr. Lex. Coron. p. 45.

quire of the Manner † of the killing, and with what Weapon, and of all the Circumstances. † Mir. c. 1. f. 3. p. 46.

VIII. Next let the Sheriff § immediately attach all those who shall have been (10) indicted, if they are to be found. § Brac. 121. b. f. 2. Fle. 37. f. 4.

IX. And if they are not to be found, let the Coroner inquire, who they are who have withdrawn themselves on that Occasion; and let the Sheriff forthwith seize || their Lands into our Hands, simply, without removing on our Part any Bailiffs, or other Minister, until they are convicted by Judgment, or cleared of the Felony. Next, let him seize all their Chattels into our Hands, and appraise them by good Inquest, whether they be the Chattels of Villains, who have fled and are suspected, or of Freemen, and cause the Value to be inrolled in the Roll of the Coroner, and delivered to the Township to be answered for to us, in case the Person indicted either refuses to submit himself to Justice in our Court, or shall be attainted as a Felon. || 2 In. 207. 3 In. 228. Brac. 123. f. 5. 127. f. 6. 136. c. 18. f. 1. 2. Fle. 37. f. 7. — 38. f. 1, 2. Mir. c. 1. f. 13. p. 101, 105. [f. 5. a.]

X. Afterwards, let it be inquired, † whether any of the Persons indicted ever by Virtue of our Writ of Manas (9) found Surety of our Peace; and let the Names of the Main-Pernors be inrolled agreeable to the Verdict. † Mir. c. 1. f. 13. p. 47, 45, 48.

XI.

(9) OUR WRIT OF MANAS. The Writ of Manas, or Menace here, aud. de Minis in the Register, is what we now call the supplicavit. *Umfrey. Intr. Lex. Cor.* p. 47.

† Brac. 125.
f. 2, 3.
Fle. 40. f. 5.
Mir. c. 2. f. 3.
p. 117. c. 2. f. 7.
p. 125. &c.

XI. If there be any one who would avenge himself of the Death by Appeal † of Felony, let the Male, of what Age soever he be, be received before the Female; and the next of Blood before one more remote.

§ St. Gloc. 6.
Ed. 1. c. 9.
2 In. 320.
2 Haw. P. C.
c. 23. f. 33.
|| 4 Ed. 1. Off
Coron.

2 In. 32. 176,
420.
Gl. 1. 14. c. 1.
Brac. 139. b. f.
1. 149. l. 1. &c.
Fle. 38. f. 12.

Mir. c. 1. f. 13.
p. 45. — c. 2. f. 8.
p. 127, 128.
St. P. C. 1. 2.
c. 14.
2 Haw. P. C.
c. 9. f. 39, 40.
Hal. P. C.
p. 67.

XII. And if the Plaintiff will bring his Appeal within a (10) Year § and a Day, let him, upon finding in full County two sufficient Pledges, || distrainable to the Sheriff of the County, in whose Bailiwick the Felony was committed, that he will prosecute his Appeal according to the Law of the Land, be received thereto.

XIII. Then let the Coroner enter his Appeal, and the Names of his Pledges. Afterwards, let the Bailiff of the Division, where the Felony was committed, be commanded to have the Bodies of the Appellees at the next County to answer to the Plaintiff.

† Brac. 138. f. 3.
139. f. 12. 13.
Fle. 48. f. 9. —
53. f. 42, 44.

XIV. And if (11) several ‡ are appealed

(10) YEAR AND A DAY. The Year and the Day in this Case shall be accounted from the Death; for before that Time no Felony was committed. 2 In. 320, 2 Haw. P. C. c. 23. f. 33.

(11) IF SEVERAL ARE APPEALED. Since *Bracton*, our Author, and *Fleta* wrote, the Law has been changed; for now there shall be but one Appeal brought, in which shall be comprehended all the principals and Accessaries, according to *Waite's Case*, where the Wife brought one Appeal of Murder of her Husband against several, and after she brought seven several Appeals against several Persons of the same Murder as Principals. Here it was resolved by the whole Court, that all the Appeals, except the first, ought to abate. St. P. C. p. 65, 4 Co. 47. b.

pealed, viz. some of the Fact and some of the Force. or as Accessories to the Fact, to every Appeal let two Pledges to prosecute be entered ; and let the Appeal be entered seperately against each Person.

XV. And if the Bailiff at the second County * Return that he could not find them, then let it be awarded that the Principals appealed of the Fact be solemnly demanded † to submit to our Peace, and to take their Tryal for the Felony whereof they were appealed ; and let them be so demanded from County Court to County Court, until they appear, or be outlawed.

* St. P. C. p. 67.

† Brac. 125. c. 11. f. 1. & 6. 149. f. 5.

[f. 5. b.]

Fle. 40. f. 5.—

41. f. 9.

Mir. c. 2. f. 8. p. 128.

2 Haw. P. C. c. 9. f. 41.

XVI. If the Plaintiff makes Default § at any County Court, then let the Exigent remain till our (12) Coming into the County, or the Eyre of the Justices. Provided nevertheless if the Plaintiff will resume (13) his Appeal, let him on finding other Pledges to prosecute be received there-to, so as he pray it within the Year and the Day.

§ Brac. 126. f. 7, 8.

2 Haw. P. C. c. 23. f. 130, 131.

XVII. But as to those who were appealed of consenting, and as Accessories of the Fact, whether they withdrew themselves or not, no Exigent shall be awarded against them, nor shall they be compelled to

(12) TILL OUR COMING. i. e. till the Court of K. B. comes there. 2 Inst. 281.

(13) RESUME HIS APPEAL. How far a Discontinuance of a former Appeal will be a Bar of another. See 2 Haw. P. C. c. 23. §. 130.

(14)

|| Stam. P. C. to answer to the Plaintiff before (14) Judgment be pronounced against the || Principal. But if the Principal be outlawed, then let Exigents be immediately awarded against the Accessories.

XVIII. And when any one is outlawed, or hath withdrawn himself, or is (15) suspected, let the Coroner ‡ inquire of what

2 In, 182. Wes.
I. c. 14.
B ac. 127. b.
f. 9. 10. 11. 13.
14. 138. f. 4.
148 f. 6. 8. 10.
11. 148. f. 4.
Fle. 41. f. 13.
19—48. f. 8. 9.
—53. f. 43. 44
Mir. c. 2. f. 7.
p. 127.
‡ Brac. 124. c. 10.
f. 1.
Fle. 40. f. 2.
Mr. c. 1. f. 13.
p. 45. 48.

(14) BEFORE JUDGMENT BE PRONOUNCED AGAINST THE PRINCIPAL. Anciently he that struck the Stroke, whereof the Party died, was only the Principal; and those, that were present, aiding, and assisting, were but in Nature of Accessaries, and should not be put upon their Trial, till he that gave the Stroke were attaint by Outlawry or Judgment. But at this Day, and long since, the Law hath been taken otherwise, and namely, that all that are present, aiding, and assisting, are equally Principal with him that gave the Stroke, whereof the Party died. 4 Hen. 7. 18 a. *Per omnes Justiciarios utrinque Banci*; for though one gave the Stroke, yet in Interpretation of Law, it is the Stroke of every Person that was present, aiding, and assisting; and though they are called Principals in the second Degree, yet they are Principals, and shall be arraigned and receive Judgment if Convict, though he who actually gave the Stroke neither appear, or be outlawed. *Hal. P. C.* p. 437.

(15) OR IS SUSPECTED. The learned Editor of the first Book of *Fleta* remarks, that a Person who was only suspected of Murder, in the Days our Author wrote, was obliged to answer and defend himself as much as if he was really guilty; and illustrates this Practice by an ancient Precedent from the Records in the Reign of H. III. which translated is as follows,

“ Pleas before our Lord the King on the Morrow
“ of St. Hill. 25 Hen. 3d. on the Back of Roll the
“ 12th.”

Oxon, Leic, ff. *Stephen* the Son of *Siueon*, *Peter* and *Henr*, his Sons, whom common Fame suspected of having the Day before, wickedly murdered, *Richard de Pleffet*, Knt. in the House of one *Johanna Arshyk*, were attached to answer concerning such suspicion.

what Decenna or (16) Mainpas such Fugitive was, and according to the Verdict, make his Inrollment, and let him inquire of the Lands and Chattels of the Fugitive, whether they are in his Bailiwick, or elsewhere.

XIX. And if they appear before the Outlawry of the Principal, let them be replevifable, † and immediately after Outlawry

† Brac. 128. f. 13.
Fle. 42. f. 18.
See more references, Brit. 43 b.

C 2

lawry

And *Jobanna Arshyk*, who was likewise suspected of the same Murder, on Account of certain Differences which had arose between them the aforesaid *Richard* and *Jobanna*, was attached to answer on Account of such suspicion.

And the said *Jobanna*, *Stephen* the Son of *Simeon*, *Peter* and *Henry* his Sons, come and defend, the Force and Murder, and all Wickedness and Felony, and say, that they are in no Ways guilty of such Murder, and voluntarily put themselves for Good and for Bad upon the twelve, as well Knights as others, &c. of the Visne of *Halbton* in the County of *Leicester*, by whom, &c. and who neither, &c. and who in no wise, &c. and upon the four Townships in the Neighbourhood of *Halbton*, *Catthorp* and *Goutby*, and upon the Homage of *Richard de Martiwast* of *Halbton*,* therefore the Sheriff was commanded to cause to come before our Lord the King, on Sunday before *Quadragesima*, at *Worcester*, twelve as well Knights, &c. of the aforesaid Visne, and the aforesaid Townships, to give their Verdict upon this Matter.

Afterwards came twelve Knights, and the aforesaid Townships, and say upon their Oaths, that the aforesaid *Jobanna*, *Stephen*, *Peter*, and *Henry*, are not guilty of the Death of the aforesaid *Richard*, nor did he die by their Wickedness, and therefore they are acquitted thereof. Note on *Fleta*, p. 36.

* This Family, in *Burton's Description of Leicestershire*, under *Godeby*, is called *Martivall*, and Sir *Nicholas de Martivall* was Lord of that Manor, in 6 Ed. I. *Burton's Leicest.* p. 118.

(16) MAINPAS. *Manupastus*, i. e. one whose Diet and Cloths are found him at the Expence of another, who is answerable for him. *Brac.* 124. b, f. 1.

(17)

lawry of the Principal, come and answer to the Plaintiff.

[f. 6. a.]

§ Bract. 121. b.

f. 4.

Fle. 37. f. 6.

XX. If the Felony was committed out of a Dwelling-house, then let the Coroner inquire, who first (17) found § the Body, and attach him or them, Women as well as Men, (18) Young as well as Old, and let them out by Pledges, until our Coming into the County or the Eyre of the Justices, and let the Coroner enter in a (19) Roll, their Names, and the Names of the Pledges.

XXI. We forbid all Coroners upon Pain of Imprisonment and heavy Ransom, that none of them make his Inquests of Felonies, Misadventures, or other Things belonging

(17) FIRST FOUND. An ancient Record, likewise set forth by the Editor of *Fleta*, will give Light to this Method of Proceeding.

Among the Pleas in Eyre at *Cambridge*, 45 H. 3. Roll 25.

Robert, the Son of *Martin de Bodeksham*, a Lad twelve Years old, was drowned in a Well, in the Vill of *Bodeksham*. *Amphelis*, his Mother, who first found him appeared, but neither she or any other Person is suspected. Judgment, casual Death. And the twelve Jurors present no other Finder; therefore in Mercy, and likewise in Mercy for other Defaults. The Vill of *Bodeksham* also buried the Body, without View of the Coroner; therefore in Mercy; afterwards it was certified, that our Lord the King, about a Year before, *out of his great Indulgence*, had by his Writ commanded, that such as were found dead, unless they were feloniously killed, should be forthwith buried, without waiting for the Coming of the Coroner; therefore the Amercement is remitted. Noteon *Fleta*, c. 25. f. 4. p. 56.

(18) YOUNG. The Statute relating to the Office of Coroner, 4 E. 1. says, If they can speak, or have Discretion.

(19) ENTERED IN A ROLL. *Fleta* says, The Names should be entered in the Sheriff's Roll, as well as the Coroner's, p. 37. f. 4.

longing to his Office, by Procurement of Friends, or set aside a Juror on the Challenge || of either Party, nor by himself, or Clerk, or any others belonging to him, take or suffer any Thing to be taken for the executing his Office; (20) nor erase, or alter, or practice any kind of Fraud in his Rolls, or suffer it to be done.

|| 1 Inf. 155. b.
Fle. 37. f. 3.
Mir. c. 1. f. 13.
p. 46.

XXII. If he finds that any one has come to his Death by Misadventuro, then let him inquire by what Accident, * whether it was by being drowned, or by a Fall, or whether he was killed, without other Felony prepenfed, or was a Felon of himself; and if he was drowned, whether in the Sea, or fresh Water, or in a Well, or Ditch, and by what Accident he was drowned; also from what Vessel he fell, what Things § were in such Vessel, to whose Hands they came, and of what Value, and who first found the said Body.

* Brac. 120. b.
f. 2.—122. f. 7,
8.
Fle. 37. f. 9.
Mir. c. 1. f. 13.
p. 46, 47, 48.

§ 1 Inf. 114.
3 Inf. 57.
Brac. 122. f. 8.
Fle. 37. f. 9.
Mir. c. 1. f. 13.
p. 48.

XXIII. If in a Well, then let it be inquired, who owned the (21) Well; if by a Fall, whether it was from a Mill, or from a Horse, or a House, or a Tree.

[f. 6. b.]
Fle. 37. f. 9.
Mir. c. 1. f. 13.
p. 48.

XXIV. If from a Mill, || what Things were then moving in the Mill, who owned the Mill, and the Value of the Things therein

C 3

(20) HIS OFFICE. See *Lex. Cor.* Introduction. p. 51.

(21) THE WELL. Because the Owner was to be amerced, and be obliged to fill the Well up at his own Expence. *Fleta*, c. 25. f. 20. p. 38.

therein, then in Motion ; and in the like Manner of Houses, Horses, Trees and Carriages ; if the Person was killed, then let it be inquired, whether it was done by Man or Woman, or by Beast, or any other Thing ; if by a Man, whether by himself, or by another ; and if by another, whether the Misadventure happened by Chance, or from a Necessity of avoiding Death ; if by a Beast, whether by Dog, or other Beast, and whether the Beast was taught or set on, and encouraged to do such Kind of Mischief, or not, and by whom, and so of all the Circumstances.

XXV. Of such as are drowned within our Realm, by falling from a Vessel not at Sea, our Will is, that the Vessel, and whatsoever was found therein, be seized as a (22) Deodand, † and enrolled by the Coroner, that is to say, whatsoever was moving ; for if a Man happens to fall from a Ship, under fail, nothing can be deemed the Cause of his Death, but the Ship itself, and the Things (23) moving in it ; for as to

† 3 Inf. 57, 58.
Brac. 122. f. 2.
Fle. 37. f. 9.
Mir. c. 1. f. 13.
p. 48.
Str. P. C. 20.
Haw. P. C.
p. 66.
Hal. Pl. C. p.
419.

(22) DEODAND. This Forfeiture of whatever procures the Death of a Person, without the Default of another, was introduced to increase the Terror and Abhorrence of Murder ; so that nothing that occasioned it should seem to go unpunished. *Haw. Pl. c. 26. f. 3.*

See *Um. Lex Cor. l. 1. c. 12.* of Deodands, p. 92.

(23) THE THINGS MOVING. i. e. As Lord C. J. *Hale* interprets this Passage ——— If any particular Merchandize fall upon a Party, whereby he dies, that particular Merchandize shall be a Deodand, and not the Ship. *Hal. Pl. C. p. 422.*

to the Merchandize which lies at the Bottom of the Ship, it cannot have been the Occasion of it; and so in the like Cases.

XXVI. Concerning such as are drowned in Fountains and Wells, our Will also is, that the inquiry be, as in the other Cases; and that the Coroners admit to Mainprize the first Finders, and inroll their Names; and the Names of their Pledges; [f. 7. a.] and as to such as have come to their Death by Carriages, Mills, or the like, let the Coroner make his Inquest, and inrollments as above directed, where Persons are drowned.

XXVII. Whenever the Coroner takes his Inquest on the Body of a Person felonously killed, let him summon one or more that were of Kin to the deceased on the Side of the Father or Mother, according as the (24) Custom of the County is, to appear before him, to prove (25) Englecherie,* and inroll their Names.

XXVIII.

Brac. 135. f. 6,
7.
Fle. 46. f. 2.
Mir. c. 1. f. 13.
p. 104.
St. P. C. 18.
Haw. P. C. c. 75.
78.
H. P. C. p. 447.

(24) ACCORDING TO THE CUSTOM. This Custom being very various; it was one of the Articles of the Eyre to inquire, what was the Custom of presenting Engleshire in such a County. *Brac.* 135. b. c. 15.

(25) ENGLECHERIE. The Presentment and Proof that the Party slain was an Englishman, was called *Englisbery*, and was provided by King *Canute*, to prevent the secret Murder of his Danes, who were hated by the English, and oftentimes privily murdered.

William the first likewise when he came in, finding the same Animosity by the Danes and Saxons, against the French and Normans, applied this Law to the French and Normans, as *Canute* had done to the Danes; but because many Mischiefs happened in diverse Counties in England, who had no Knowledge of the Presentment of *Engleshire*, it was by the 14 E. III. c. 4. intirely abolished. *Hal. Pl. C.* 447, 448.

† 3 In. 129,
130.

Brac. 122. b.

f. 4. — 152. &c.

Fle. 56 f. 16. &c.

Mir. c. 1. f. 13.

p. 104, 105. c. 2.

f. 3. p. 117.

— c. 3. f. 14.

St. P. C. 142. b.

2 Haw. P. C.

c. 24.

2 Hal. P. C. p.

67.

§ West. 1. 3. Ed.

1. c. 10.

2 In. 32. 176.

Fle. 38. f. 12.

St. P. C. 52. b.

2 Haw. P. C.

c. 9. f. 39.

2 Hal. P. C. p. 67.

|| Brac. 135. b.

Fle. 45. c. 29.

Mir. c. 1. f. 13.

p. 45. 102. &c.

2 Hal. P. C. 68.

2 Haw. P. C. c. 9.

f. 44.

XXVIII. Let the Coroners also receive the Confessions of Felonies committed by Approvers † in the Presence of the Sheriff (for our Will is, that he be his (26) Controller § in every Part of his Office) and inroll such Confessions.

XXIX. And when any Man has fled to some priviledged || Place, our Will is, that the Coroner as soon as he has Notice of it, send his Precept to the Bailiff of the Place to summon the Neighbours and the four nearest Townships to appear before him at a certain Day at the Church where the Fugitive fled to, and in their Presence receive the Confession of the Felony; and if the Fugitive pray to abjure (27) our Realm, let the Coroner immediately do what is incumbent on him. But if he does not pray Abjuration, let him be delivered to the Township to keep at their Peril.

XXX. If the Coroner be to take an Inquest of Rape, ‡ let him carefully inquire into all the Circumstances — of the Force — of the Felony — and of the presumptive Signs; such as of the Sprinklings of Blood, or of the Cloths torn, and inroll the same.

XXXI.

(26) HIS CONTROLLER, i. e. As the Statute, *W. 1. c. 10.* expresses it, the Sheriff shall have Counter Rolls with the Coroner's; but he is not thereby Judge of the Cause. 2 *In. 176.* 2 *Hal. Pl. 67.*

(27) TO ABJURE. The whole Business of Sanctuary, and the Abjuration before the Coroner is taken away by 21 *Jac. c. 28.* See *Intro. Umfrevill's Lex Coronatoria*, P. 57.

XXXI. If of a Wounding, * let him inquire with what Weapon; and of the Length and Depth of the Wound: let him likewise enter into his Roll, all Judgments of Death given in his Bailiwick by any others, besides our Justices; and in such cases, we will that their Rolls be a Record.

* 4 Ed. 1. off Cor.
Brac. 122. b. f.
1, 2.
Fle. 38. f. 15.
Mir. c. 1. f. 13.
p. 200. c. 2. f. 20.

XXXII. And whereas we have declared above, that Coroners ought to make Inrollments of Appeals* of Felonies, of the Death of a man; let them have the like Power in Appeals of Rape, Robbery, Larceny, and in appeals of every other Kind of Felony.

* Haw. P. C.
c. 9. f. 39.
2 Hal. P. C.
p. 67.

XXXIII. It also belongs to their Office to inquire of antient Treasure † found in the Earth, of Wreck of the sea, of Sturgeons and Wales, as soon as they shall have Notice thereof; and to attach and let to Mainprize the Finders and Eloigners, and inroll their Names, and to secure such Findings for our Use.

† 4 Ed. 1. off
Coron.
4 In, 271.
Brac. 122. c. 6.
Fle. 36. f. 1. 38.
f. 11.
Mir. c. 1. f. 13.
p. 45. 100.
St. P. C. 51. b.
2 Haw. P. C.
c. 9. f. 36, 37.

XXXIV. Lastly, our Pleasure is, that our Sheriffs, and other Bailiffs, be attendant on our Coroners, and execute their Precepts.

For more of Coroners, see Lex Coronatoria; a very accurate Treatise of the Office and Duty of Coroners, by Edward Umfreville, Esq;

C H A P. II.

Of E Y R E S. (1)

Sect. I. **W**ITH respect to our Coming, and the Eyre * of our Justices, our Will is that public (2) Proclamation be made in the Market-Towns, Cities, and Boroughs, throughout the County, as well within Franchises as without, that all the Freeholders of the County, and the (3) *Provost* of every Vill, and four (4) others of the same Vill, and all those who were let to Mainprize throughout the County, appear at a certain Day, containing forty † Days at least, before us, or such Justices as shall be named in our Precept to keep the Eyre in the same County; and that all those who claim any § Franchise

* 1 In. 293.

2. In. 210. 377.

4 In. 184.

Gl. l. 9. c. 11.

Bra. 115. b. c. 1, 2

Fle. 23,

[f. 8. a.]

Mir. c. 4. f. 20.

21.

2 Ha. P. C. [p.

153.

St Marl. c. 27.

52 H. 3.

2 In. 149—282.

St Glo. 6. Ed. 1.

18 & 30 Ed. 1.

2 In. 277—494.

4. In. 184.

Fle 23. f. 3.

Mir. c. 4. f. 21.

(1) EYRES. Of the Origin of Justices in Eyre, why so called, and how long they continued. 4 In. 184. *Dug. Or.* p. 51. *Seld. Notes on Hengb.* p. 143.

(2) GENERAL PROCLAMATION. See the Form of this general Summons, *Dug. Or.* p. 52. Likewise the form of the Precept, not unlike this Summons, which the Justices of Goal Delivery, after their Commission sealed, do or should issue. 2 *Hal. Pl. C.* p. 32.

(3) AND LORD. Called in the same Summons *Prepositus*. Compare this with the *Busoues* in *Bra.* 115. b. and the Homage of *Richard de Martiwast* in the Note on fo. 5. b.

(4) AND FOUR OTHERS, Called in the Summons in *Dug. Lawful Men.*

chise in the same County, be the same Day before us, or the same Justices, and deliver in (5) Writing a plain and distinct Account of what Franchises he claims; and that all those, who have any || Complaints to make against our Ministers, or our Bailiffs, (6) or any other Persons whomsoever, be there at the same Day, to make out such Complaints, and find Pledges to prosecute; and that the Sheriff of the County have there all such Writs as have been adjourned until the Eyre, and all the Assizes of Novel Disseisin, Mortdancestor, Darrein Presentment, Utrum, and of Dower, and all the Prisoners, Attachments, and Indictments; and we will command our Justices of the (7) Bench, that that they adjourn * all the Pleas of the County and send them to us, or the said Justices Itinerant in that County, so that they be there at a certain Day.

|| St Glo. 6. Ed.
1. c. .1
2 In. 279.
Mir. c. 4. f. 21.
St. quo warr. 30
Ed. 1. f. 15, 16.

* 4 Inf. 184.
Fle. 23. f. 1.

II. And as to the coming of our Justices, our Will is, that as soon as they are come to the Place appointed for holding the Eyre, they † produce our Letters (8) Patents, and cause them to be read in

[f. 8. b.]

† 2 In. 210.
Brac. 115. f. 1.
Fle. 23 f. 2.

(6) OR OF ANY OTHER PERSONS. Agreeable to *Britton* is the Statute of Quo Warranto. 30 Ed. 1. f. 15, 16.

(7) OUR JUSTICES OF THE BENCH. i. e. Of the Common Bench; and if they were sitting in the County where the Eyre came, their Jurisdiction ceased, during the Eyre. 4 In. 185.

(8) LETTERS PATENTS, By Writ, in *Bracton* and *Fleta*, of which, see the Form in *Dug. Or.* p. 52.

in the Hearing of the People ; and afterwards let him who is first named in the Commission, shew and declare (9) to the People the Occasions and Advantages of their coming into that County ; this done, let the Effoyns of the common Summons be received, and immediately determined, and adjourned to the fourth Day.

III. Next, let the Petitions of those who claim certain Franchises in that County be received (come they from whom they will) and let their claims be inrolled, and a Transcript of the same Inrollment be delivered to the Sheriff ; and as to all such Franchises as are not claimed, let the Sheriff be commanded to seize them § into our Hands, in the Name of a Distress, and be answerable to us for the Issues, until those who shall claim them have saved their Defaults for not attending the Summons, and let them afterwards shew by what authority they have enjoyed such Franchise ; afterwards let the Justices take the Wands of the Sheriff and of the Lords of the Franchises, and of all the other inferior Bailiffs, and then let the Sheriff swear, || that he will lawfully execute the Commands of our Justices with Uprightness, and faithfully promise to conceal the Counsels of their Eyre, as

§ 2 In. 282.
St Glo. 6. Ed. 1.
Fle. 23. f. 3.

|| § In. 165.

[f. 9. a.]

(9) DECLARE TO THE PEOPLE. The Commissions, by Virtue whereof the Judges hold the Assizes, are still opened and read in public, and a Charge conformably to the ancient Usage is given to the Grand Jury.

as help him God, and the holy Evangelists ; and after this Oath is taken, let the Wand be delivered back to him ; next let the Sheriff present all his Officers, Bailiffs, Clerks and others by whom the Precepts of the Justices and Executions of their Judgments, are to be executed ; and let them all take the same Oath that the Sheriff took, and their Wands be delivered back to them ; and if any * Archbishop, Bishop, or Pryor, * Fle. 23. f. 4. Earl, or Baron, or other Personage, claims, the Franchise of Return of our Writs, let them take the same Oath that the Sheriff took, or hold their Wands in their Hands, and present such Bailiffs in their Stead as will take the Oath, and thereby become answerable for the due Execution of their Office.

IV. Afterwards, let the Lords deliver their Wands to their Bailiffs, and then let Proclamation be made, that all persons within such Franchises, except the Bailiffs, may || depart unto their own Homes, until further summons at a certain Day. || Fle. 23. f. 4.

V. Next, let the Bailiffs of the Sheriff swear, ‡ that they will truly present two or (10) four of their Bailiwick, more or less, † Brac. 116. f. 1. Fle. 23 f. 4. who are neither appealed of any Crime, nor are Appellants, and such as are most capable of knowing or inquiring into and discovering

(10) TWO OR FOUR OF THEIR BAILIWICK. *Bracton* and *Fleta* say, These were to be Knights ; and that Number chosen out of each Bailiwick. *Brac.* 116. a. f. 1. *Fle.* 23. f. 4.

[f. 9. b.] covering secret Crimes relating to the Breach of our peace.

VI. And when those names are given in, let those four come and swear, that they will well and truly associate to themselves such (11) others, by whom the Truth may best appear.

* *Bra.* 116. f. 2.
Fle. 23. f. 5.

VII. Afterwards, let them, together with those they have chosen for the most sufficient, * swear that they will lawful Presentment make of such Articles as shall be delivered to them in writing; and that they will not fail doing it, either for Love, Hatred, Fear, Reward, or Promise; and that such secret (12) Crimes they will not conceal; so help them God, and his holy Evangelists.

† *Brac.* 116. f. 2.
Fle. 23. f. 6.

VIII. Then let the Articles be read † to them, and delivered to every Dozeyn (13) separately, and afterwards, let Proclamation be made, that none presume to amerce any man for making Default in a Court Baron or Hundred, who shall at that Time be before us, or before our Justices, and that no

(11) SUCH OTHERS. *Brac.* says, Twelve Knights, if they can be had, otherwise Freemen. *Brac.* 116. a. f. 1.

(12) SECRET CRIMES THEY WILL NOT CONCEAL. This Part of the Oath is neither in *Bracton* or *Fleta*.

(13) TO EVERY DOZEN SEPERATELY. i. e. To the Inquest of each Bailiwick or Hundred, for both *Brac.* and *Fle.* (though our Author does not express himself so fully) say, That four Knights and twelve other Freemen were to be chosen out of each Bailiwick. *Brac.* 116. a. f. 1. *Fle.* 23. f. 4. 2 *In.* 211.

no Market be kept within ten Miles round the Town where the Eyre shall be held, except in that Town itself, unless such Town is not able to find sufficient Provision for the Inhabitants thereof; and that no Person come on Purpose to the Eyre, unless he is an Attorney, or has Business that concerns us, but let him look to his own Affairs at Home.

IX. Afterwards, let the Coroners and their Heirs be commanded to deliver to the Justices, what Rolls * they have made up since the last Eyre; and our Pleasure is, that the Justices inclose them under their Seals, and directly, without any Examination at that Time, deliver the Rolls back to them, so as they and their Clerks attend upon the Justices, *de die in Diem*, while they have occasion for them. [f. 10. a.]

X. Lastly, let the Dozeyns give in their Presentments † in Writing upon the Articles delivered to them, and let the same be by Indenture, one Part thereof to remain with the Justices, and the other with the Presentors; not that the Articles which are to be delivered to them, are always the same in (14) Number; § for as Crimes in-

* Fle. c. 23. f. 1.

† 2 In. 211.
Brac. 116. f. 2.

§ 2 In. 211.
Brac. 116. f. 2.

(14) SAME IN NUMBER. The ordinary Chapters or Articles, amounted to 138, or there about. And by the Stat. *West.* 1. c. 27. were to be wrote out by none but the Clerks of the Justices in Eyre, and delivered by them to each Hundred, for which the Statute allowed them to take of each Hundred, a Fee of two Shillings. 2 In. 212.

increase, so must the Articles and other Remedies increase also ; some of these Articles are concerning Counterfeiters, Murders, accidental Deaths, Misadventures, and other Matters, as will appear from the following Chapters.

C H A P. III.

Of the A R T I C L E S.

* Cap. Itin. in
vet m. ch. 150,
&c.
2 In. 211. 283.
4 In. 184. 194.
Brac. 116. f. 2.
Fle. 24. c. 20.
Mir. 268. c. 4.
f. 21.

Sect. I. **I**N the first Place, Let the old * Articles and Chapters presented in the last Eyre in that County, touching Breaches of our Peace, which then remained undetermined, be inquired of, heard, and determined.

II. As to our mortal (1) Enemies abiding in our Land, they can't properly be proceeded against by Presentment, but may, by Indictment and Appeal, as will appear in the Chapter of Appeals.

* Brac. 116. f. 3.
Fle. c. 20. f. 13.
Mir. 269. c. 4.
f. 21.

C H A P.

(1) MORTAL ENEMIES. Neither *Bracton* or our Author, make this one of the Articles of the Eyre, but it stands first in *Fle. c. 20. f. 1.*

C H A P. IV.

Of Counterfeiters of the Seals, and [f. 10. b.]
of the Coin.

Sect. I. **L**ET Inquiry be made of Counterfeiters * of the (1) Seals, and of the Coin, and not only of such as Counterfeit our Coin, but of all those who shall have any Way (2) falsified our Seal, as by fraudulently hanging it to any Charter without our (3) Leave, or stealing it away

OR

* 25 Ed. 3. c. 2.
2 Inf. 555.
3 Inf. 15. &c.
169.
Gl. l. 1. c. 1. l.
14. c. 7.
Brac. 118. b.
119. b. f. 2.—
413. b. f. 2.
Fle. 32. c. 22.
f. 1, 2, 3.
Mir. c. 1. f. 6.—
c. 3. f. 6.—c. 4.
f. 2.
St. P. C. p. 1.
b. 2, 3.
Haw. P. C.
c. 17. f. 48. &c.
Hal. P. C.
179.

(1) OF THE SEALS. By the 25 Ed. III. this is confined to the Great and Privy Seal; but the Counterfeiting the Signet, or Sign Manual of the King's, is Treason, by 1 Mar. Sess. 2. c. 6.

(2) FALSIFIED OUR SEAL. Our Author by the Words Falsified our Seal, seems to mean “forging the Great Seal;” and by the Words, “fraudulently hung it to any Charter,” seems to be understood, the affixing the True Seal, to a false Writ or Charter.

See Note the 2d on the 22d cap. of *Flet.*

(3) WITHOUT OUR LEAVE. Since the 25 E. 3. the hanging the Great Seal to a false Charter, is not a Counterfeiting of the Seal within that Stat. but an Abuse of it; therefore this Offence, as well as the other Species of Treason, mentioned here by our Author, are not at this Day High Treason, but great Misdemeanors. 2 Inf. 15. Hal. P. C. p. 183.

or robbing us of our Seal, or having found it in any other Manner, sealed writs therewith without other authority.

† 25 Ed. 3. c. 2,
2 Inf. 575, &c.
3 Inf. 15. &c. 93.
Gl. 1. 1. c. 1.

J. 14. c. 7.
Brac. 118. b.

119. f. 2.
Fle. 32. f. 4. &c.

Mir. c. 1. f. 3.

6.—c. 5. f. 1.
par. 10.

St. P. C. 1. 1.

p. 2. 3. 4.

Haw. P. C.

c. 17. f. 54. &c.

Hal. P. C.

p. 188.

§ 3 Inf. 17.

5 and 18 Eliz.

8 and 9 W. 3d.

c. 26. f. 3, 4.

15 and 16 G. 2d.

c. 28.

|| 3 Inf. 18.

25 Ed. 3. 1 and

2 P. and M.

c. 11. f. 2.

II. And also of Falsifiers who have Counterfeited our Coin † or put more (4) allay in it than according to the Form and Usage of our Realm ought to be put.

III. Or that have coined Money, whether Good or Bad, in our Realm without our Leave.

IV. Likewise of those who have § clipped our Coin or otherwise embased it.

V. Of those also who (5) counterfeit Money, or bring || into our Realm other Money (6) resembling ours, in despite and to the Damage of us and our subjects.

VI.

(4) MORE ALLAY. It is not every Mistake in Weight or Allay that chargeth the Moneyers with so high a Crime as Treason, for the Master is chargeable by his Indres to a Fine and Ransom for some Mistakes of this Nature; but it must be a wilful, gross, proditorious Doing it; for the Indictment runs proditorie; and so it must be proved for it is difficult for the best Artift to make every Piece of the precise Weight. *Hal. P. C. p. 213.*

(5) WHO COUNTERFEIT MONEY. The Counterfeiting foreign current Coin is Treason by the 1 Mar. sess. 2. c. 6. But the Counterfeiting Coin, not current, is by the 14 E. 1. c. 3. only Misprision of Treason.

The Punishment for Coining or Counterfeiting Halfpence, or Farthings, is two Years Imprisonment, and Sureties for good Behaviour for two Years more. 15 & 16 Geo. 2. c. 28. f. 6.

(6) RESEMBLING OURS. By the 1st. & 2d. P. & M. c. 11. f. 2. It is also Treason to bring into the Realm counterfeit Money like to foreign Coin current here, knowing the same to be false and counterfeit, with an Intent to utter it,

VI. Upon Presentment of this (7) Felony, let the Sheriff cause all those who are indicted of it to be instantly apprehended, and their Bodies kept safely in Prison ; and let them be brought before us, or before our Justices ; and to the Intent that no one may be unprepared with an Answer, let those who are so taken, have † fifteen Days, at least, if they pray it, to provide for their Defence, and in the mean Time let them be safely kept ; and when they shall appear in Judgment before us or before our Justices, let them be there arraigned * by the Sheriff, or other Officer, on the Behalf of us, and indicted of the Felony according to the Nature of the Presentment.

VII. And if they (8) will not put themselves upon their Acquital, let them be put to their (9) Penance, † until (10) they pray

D 2

to

† 1 Inf. 134. b.
MII. c. 4. f. 16.
p. 261.
[f. 11. a.]
* 1 Inf. 263.
Brac. 119. f. 1.
Fle. 31. f. 2.
St. P. C. 147. b.
c. 59.
2 Haw. P. C.
c. 28.
2 Hal. P. C.
p. 216.
† West. 1. c. 12.
1 Inf. 391.
2 Inf. 178. 179.
3 Inf. 217.
St. P. C. 1. 2.
c. 60.
2 Haw. P. C.
c. 30. f. 13. &c.
2 Hal. P. C.
p. 319
Fle. c. 34. f. 33.
Mir. c. 1. f. 9.
p. 36.

(7) THIS FELONY. It is plain from the Context, That under Felony, *Britton* includes Treason also. 1 *Inst.* 134. b.

(8) IF THEY WILL NOT PUT THEMSELVES. At this Day, in Treason, the standing mute amounts to a Conviction. *Hal. P. C.* 224.

(9) PENANCE. *Bracton* no where mentions this Punishment *St. P. C.* 149. b. and though *C. J. Hale*, thinks Penance was by the Common Law, yet *Mr. Emlyn* in his Notes on 2 *Hal.* says, that tho' the Stat. *West.* 1. by the Manner of the Expression, does not seem to have introduced this Penance, but rather speaks of it as a Thing already known ; yet he could not find, that it was ever taken Notice of in any ancient Author, Book Case, or record, before the Reign of *Ed.* 1. But that on the contrary, he found some Instances in the preceding reign, of Persons arraigned for Felony, standing mute, who yet were not put to their Penance, but had Judgment to be hanged ; at which Time it seems to have been the usual Practice

to do it, and let their Penance be (11) this, that they be barefooted, ungirded, and bare-headed, in their Coat only, in Prison upon the bare Ground continually Night and Day, that they eat only Bread made of Barley and Bran, and that they drink not the Day they eat, nor eat the Day they drink, nor drink any Thing but Water, the Day they do not eat, and that they be fasten down with Irons.

VIII.

Practice, That if the Prisoner stood wilfully mute, a Jury of twelve were impannelled Ex Officio; and if they found him Guilty, another Jury of twenty-four were chosen to examine the Verdict of the former; and if they were of the same Opinion, the Prisoner was sentenced to be hanged, as appears by the following Translation of a Record in the 5th of Hen. 3.

Pleas of the Crown before the Justices in Eyre in the County of *Warwick*, in the 5th Year of Hen. 3. Roll. 1.

Agnes, who was the Wife of *Robert de Bois*, appeals *Thomas* the Son of *Hubert*, of the Murder of *Robert* her Husband; *Thomas* appears, and because *Agnes* has a Husband one *Robert de Verduu*, who makes no Appeal, she herself has no Right to bring such Appeal, therefore let the Truth be inquired of by the Country; *Thomas* pleads Not Guilty, but will not put himself upon the Country; twelve Jurors say, That he is Guilty of the said Murder, and twenty-four Knights, different from the aforesaid twelve, being elected for this Purpose, say the same: Therefore let him be hanged.

Chattels of *Thomas* thirty-four Shillings and Six-pence, for which the Sheriff shall be answerable. Note on 2 Hal. P. C. v. 2. p. 322.

(10) UNTIL THEY PRAY TO DO IT. At this Day it is too late to pray it after Judgment of Penance once given. 2 Haw. P. C. c. 30. f. 16.

(11) LET THE PENANCE BE THIS. By comparing the ancient Authors with one another, the Judgment of Penance does not seem to have been uniform in all its Circumstances. 2 Haw. P. C. p. 330. f. 16.

VIII. If a Clerk § indicted of Felony, (12) pleads his Clergy, and be found such, and is claimed by the Ordinary, let it be (13) inquired how he is guilty ; and if the Presentors upon Inquiry find that he is not guilty, let judgment be that he be entirely acquitted, and if he is guilty, let his Chattles be appraised, and his Lands seized into our Hands, and his body delivered to the Ordinary ; and if the Ordinary deliver him out of Prison before due acquittal according to the Purgation of Clerks, or if he keep him so negligently as to let him escape, or out of Malice keep him in such a Manner as to prevent his coming to make his Purgation, and be convicted thereof ; in each of these Cases, let the Ordinary be in our (14)

§ Wef. 1. c. 2.
2 Inf. 150. 163,
164. 633. &c.
Brac. 123. c. 9.
Fle. 44. f. 12.—
430. f. 5.
Mir. c. 3. f. 4.
St. P. C. 123.
&c.
2 Haw. P. C.
c. 33. f. 1. &c.
117. &c.
2 Hal. P. C. 323.

[f. 11. b.]

D 3

Mercy

(12) PLEAD HIS CLERGY. Clergy is taken away in all Cases of Treason by 26 H. 8. c. 13. And though in Cases where it was allowed, it was anciently prayed and allowed upon the Arraignment of the Prisoner, yet at this Day, it is rarely done, but upon his Conviction, or standing mute. 2 Hal. P. C. p. 323.

(13) LET IT BE INQUIRED, HOW HE IS GUILTY. The Method was thus. — The Clerk upon his Arraignment pleaded his Clergy ; then came the Ordinary and demanded him ; then a Jury, Ex Officio, was summoned to inquire into the Truth of the Charge, and according to such Inquest, the Clerk was delivered to the Ordinary as acquit, or convict. Note on 2 Hal. P. C. p. 327.

Gibson's Codex v. 2. c. 5. p. 1132. last Edition.

(14) IN OUR MERCY. Though the Ordinary took himself to be the Judge of the Allowance of the Clergy and of the Purgation of the Clerk, yet the King's Courts took that Courage to make the Ordinary but a Minister

¶ Fle. 44. f. 13.
2 Hal. P. C.
p. 329.

Mercy, and according as the Ordinary shall certify us of the acquittal of those Clerks, we will cause || Restitution to be made them of their Goods, if they did not flee from our Peace.

† Circum; ag.
13. Ed. 1.
2 Inf. 488.
4 Inf. 321.
Gl. 1. 7. p. 61.
1. 10. p. 83.
Brac. 401. 1. 5.
Fle. 429. f. 3, 7.
* 2 Inf. 273.
Mr. c. 3. f. 5.
† 2 Inf. 489.

§ 2 Inf. 492.

|| 2 Inf. 489.
† 5 Co. 2. part
p. 67. a.
* 2 Inf. 491.
† 2 In. 489.
Brac. 401. f. 5.

IX. For our Will is, that holy Church retain her Priviledges unblemished, viz. that she have cognizance of judging of meer † Spiritualities, of Testaments, of Matrimony, of Bastardy, of Bigamy, * and of the Felony of her Clerks for the Correction of Vice, provided the Ordinaries take of the Laity, no (15) Money † or the Value thereof, nor give Judgment of any thing except concerning Testament § and Matrimony, and meer Spiritualities, of the Repairs of || Church-yards, and Defects ‡ in Churches, and of Mortuaries, * and of Tythes, † without prejudice to us.

X.

Minister, and themselves Judges of the Allowance, and and Disallowance of the Clergy and Purgation; and so the Judges of the Common Law would often times deliver the Clerk to the Ordinary; but *Absq. purgatione*, as where the Clerk is attaint by Outlawry, or by Judgment, or convicted by his own Confession, or upon an Appeal, or if he were a notorious Malefactor, or if he be committed by Record to the Ordinary, *Absq. purgatione*.

And in these Cases, if the Ordinary admitted him to his Purgation, he was fineable for it as a great Misdemeanour, and the Party delivered by such Purgation, shall be again committed to Prison. 2 Hal. P. C. p. 328.
—329.

(15) TAKE NO MONEY, by way of Commutation of Penance, 2 Inf. 489.

(16)

X. And if any Ordinary, either in Person or by his Procurator, demands one who is a meer Layman, or Bigamus, or of such other Condition as ought not to have the Privilege of Clergy, our Pleasure is, that all such be punished by Imprisonment, and so of a Procurator who presents himself in the Name of the Ordinary, without any Authority in writing.

XI. If any Felons will confess their Crimes, and accuse others, and become approvers, § let them be put out || of (16) Penance, and their Confessions be presently received and inrolled by the † Coroner, and immediately from that Day forward, let them receive of the Sheriffs Three (17) Half Pence * a Day towards their Support.

§ 3 Inf. 129.
St. P. C. c. 56.
|| 2 Haw. P. C.
c. 24. f. 20.
[f. 12. a.]
2 Hal. P. C.
p. 229.
† Haw. P. C.
c. 24. f. 18.
2 Hal. P. C.
p. 229.
* 2 Hal. P. C.
p. 230.

XII. And if such Appellees appear and demand Judgment, whether they ought to answer to a Fact committed before † the last Eyre, and not then presented in that County; in all these and the like Cases, let them answer (18) thereto, because our Will is, that Felonies shall not remain unpunished,

† Brac. 116. b. —
140. b. f. 5.
Fle. 30. f. 138.
—49. c. 34. f. 6.

D 4

and

(16) OUT OF PENANCE. He ought to be at his Liberty, and out of Prison; for he may disavow an Appeal made by Durefs of Imprisonment. 2 Haw. P. C. p. 270. f. 20.

(17) THREE HALF PENCE. By some it is holden, he shall have only One Penny a Day. 2 Haw. P. C. p. 207. f. 19.

(18) ANSWER THERETO. *Bracton* and *Fleta* allow this to be a good Exception. *Brac.* 116. b. *Fle.* c. 30. f. 138.

(19)

§ Brac. 116. b.
Fle. 30. f. 138.

and if the Article was not presented in the last Eyre, let the Presentors for that Hundred in the former Eyre, be in our Mercy for the (19) Concealment § thereof, and if any of them be found alive, let them be punished by Imprisonment and Fine.

ll 4 Inf. 155. b.
—157. b.
Brac. 143. b.
f. 3.
Fle. 52. f. 35.

XIII. And when the Defendants have put themselves upon the Country, and the Jurors are come into Court, they may be || challenged by this general Challenge, Sir, This Man ought not to be upon the Jury, because he was one of those who indicted me, and I presume of him, and all those who indicted me, that they still bear the same Ill-will against me, as when they indicted me, and where a Man's Life is at Stake, this exception shall be allowed of; and there are many other Challenges besides this, as shall be shewn in the Chapter of Exceptions; and when they either cannot, or will not Challenge the Jurors, or there is a sufficient Number of Jurors unchallenged

(19) CONCEALMENT. The learned Editor of the 1st Book of *Fle.* gives us an ancient Record relating to this Matter, which in English is as follows,

Pleas in Eyre at Gloucester, 5 H. 3. Roll 13, on the Back.
Hundred of Langetr.

ff. Ankentin the Miller, and *Umphry de Schipton*, were indicted for receiving of *William* the Miller, who burnt down the Grange of the Abbot of *Malmsbury*, *Ankentin* died, and *Umphry* appears and clears himself of the Suspicion, therefore quit. *William* was convicted in the County, and by Warrant from the King burnt. The Jurors concealed the whole Matter concerning *Umphry*, therefore they are in Mercy. *Fleta* c. 18. f. 22, p. 36. Note d.

lenged, to the Number of twelve, let them go to the Book, and if there are not sufficient, let the Challenges be tried, and if the Chal- [f. 12. b.] lenges be found true, so that there are not full twelve, let another Day be appointed and let the Sheriff summon more.

XIV. And when the Oath is put to them, † let them swear one † after another, that they will speak the truth of what shall be demanded of them on our part, so help them God, and the holy Evangelists, and not according to their Belief, for they cannot swear in a Matter of greater Moment, than that of Life and Member. † Brac. 143. b. f. 4.

XV. Afterwards let the Justices give a (20) Charge * to the Jurors concerning the the Fact they are to swear the truth of. * Brac. 143. b. f. 5.

XVI. And then let them all go and confer together, and be kept by Bailiffs, so that no one go near them, and if any one does it, or if there be any one among them, who is not sworn, let him be sent to Prison, and all the rest amerced, for having only suffered it.

XVII. And if they cannot all agree in one Mind, let them be (21) seperated and † examined why they cannot agree? and if the greater part of them know the truth, and the † Gl. l. 2. c. 17. Brac. 143. b. f. 6.—185. b. f. 4. Fle. 52. f. 36.—230. f. 2. Mir. c. 4. f. 24. p. 273.

(20) GIVE A CHARGE. Brac. 143. b. f. 5. gives us the Form of one of these Charges.

(21) LET THEM BE SEPERATED. With our Author agree Brac. 143. b. f. 6. And Fle. c. 34. p. 52. f. 36. But see Note 23.

the other part not, Judgment shall be according to the (22) Opinion of the greater Part.
And

(22) ACCORDING TO THE OPINION OF THE GREATER PART. Our Author seems to be the only one of the Ancients who positively asserts, that in criminal Cases the Major Part of the Jurors consenting, would make a good Verdict.

Compare *Brac.* 143. f. 2, 3. — and *Fle.* c. 34. f. 36.

What the Practice was in Civil Cases does not appear very plain from *Glan. Brac. Brit. Fle.* or the *Mir.* they almost all of them differing from each other; but yet the two following Records sufficiently explain it.

The first is in a great Assize, upon a Writ of Right, between the Abbot of *Kirkstead*, and *Edmund de Eyncourt*. In this Case the Verdict of the eleven was first recorded, — Then the Dictum of the twelfth. — And after that, the Judgment.

Pleas before the Justices in Eyre in Com.
Lincoln 56. *Hen.* 3. Roll 29 on the Back.

Robert de Horbling, and all the rest, except *Ralph* the Son of *Simon*, say upon their Oath, &c. And the aforesaid *Ralph*, the Son of *Simon* says upon his Oath, &c. But because the aforesaid eleven unanimously and expressly say, that the aforesaid Abbot and his Church have a greater Right to hold, &c. Therefore it is considered, that the aforesaid Abbot and his Successors, hold the aforesaid Tenements hereafter for ever, &c. 2 *Hal. P. C.* p. 297.

The other is in an Assize of Novel Disseisin, between *William Tristram* Plaintiff, and *John Simenel* and others Defendants, where the whole Jury consisted only of eleven, ten found for *Tristram*, and one for *Simenel*, and both Verdicts are recorded in this Manner,

K. B. East. 14. *Ed.* 1. Roll 10.

Ten of the Jurors say, that, &c. the eleventh, to wit, *John Kineth* says, &c. And because the Verdict of the major Part of the Jurors ought to be binding, It is considered, that the aforesaid *Wm.* do recover his Seisin of the aforesaid Tenements, against the said *John*, and the others, by View of the Recognitors, and his Damages, which are assessed by the Jury at two Marks; and *John* and the rest in Mercy. 2 *Hale P. C.* p. 297.

From

And if they declare upon their Oaths, that they know nothing † of the Fact, let others †Brac. 186, f. 5. be placed in their (23) Room who do know it; and if he who put himself on the first Inquest, will not put himself on a new Jury, let him be remanded back to penance till he consents thereto.

XVIII.

From hence it is evident, that at that Time of Day, it was not necessary (at least in Civil Causes) that all the twelve should agree; but in case of a Difference among the Jury, the Method was to separate one Part from the other, and then to examine each of them as to the Reasons of their differing in Opinion; and if after such Examination both Sides persisted in their former Opinions, the Court caused both Verdicts to be fully and distinctly recorded, and then Judgment was given, *Ex dicto majoris Partis Juratorum*. Note on 2 Hal. P. C. p. 297.

And probably it was this Practice which induced C. J. Thorp in the 20 Ed. 3. to take a Verdict from eleven of the Jurors; though as we are told, he was greatly re-proved for it. 41 Aff. Pl. 111.

(23) LET OTHERS BE PLACED IN THEIR ROOM. *Brac.* is silent on this Head, and *Fle.* c. 34. f. 37. p. 52. differs from our Author; but let what will have been the Rule formerly, it has for some Time been held for clear Law, that a Jury sworn and charged in a Capital Case, cannot be discharged (without the Prisoner's Consent) till they have given a Verdict. 2 *Haw. P. C.* c. 47. f. 1. And in Civil Cases also, notwithstanding what we meet with in *Glan.* l. 2. c. 17. p. 21. *Brac.* l. 4. c. 19. f. 5. p. 186. *Brit.* p. 136. a. *Fle.* l. 4. c. 9. f. 9. p. 231. and the *Mirror*, c. 4. f. 24. p. 273. concerning Jurors being added by Way of Afforciamment, or the impanneling a fresh Jury, where the first were totally ignorant of the Fact; this Method has been a long Time antiquated, and at this Day, the entire Number first impannelled and sworn, are to give up an unanimous Verdict, otherwise it is none. *Hale. P. C.* p. 261. *Gilb. Hist. Ex.* p. 78. &c. Note on *Fle.* p. 80. f. 36.

[f. 13. a.]
§ Brac. 143. b.
f. 2.
Fle. 52. f. 36.

|| Brac. 143. f. 2.
Fle. 52. f. 40,
41.

XVIII. We will also, that if any Man who is indicted of a Crime, touching Life and Limb, perceives that the Verdict of the Inquest, on which he has put himself, is likely to pass against him, and will say that some of the Jurors have procured his Condemnation § at the Instigation of his Lord, of whom he holds his Land, thro' Greediness of the Escheat, or for other Cause by any one else, let the Justices thereupon carefully examine || the Jurors, whether any Person has informed them that such Report is true, a strict Examination being often necessary, for in such Case the Justices may inquire how the Jurors are satisfied of the Truth of their Verdict; when perhaps they will say, one of their fellow Jurors told it them, and he peradventure will say, that he heard it asserted for Truth at a Tavern, or some other Place by one of the (24) Rabble, or by such a one as no Man ought to give any Credit to, or it may happen that he, or they, by whom the Jurors have been influenced, were intreated or procured by the Lords, or by the Enemies of the indicted, to get him condemned; and if the Justices find this to be fact, let the Procurors be taken and punished by Imprisonment and Fine.

† Fle. 52. f. 37. XIX. And if the Jurors are doubtful ‡ of the Matter, and nothing certain can be made out, they ought always in such case to find for the Defendant.

XX

(24) ONE OF THE RABBLE. *Fleta* says, *Aliquam Vilem & Abjectam Personam*, p. 53. f. 41.

XX. And if they say that he is Not Guilty of the Felony, let Judgment be, that he go (25) quit, and that he have Restitution of all his Lands and Goods.

XXI. And if they find that he is Guilty, viz. that he committed Treason against us, let him be (26) drawn * and put to Death.

XXII. In Felony of Counterfeiting there lies no Appeal, except between the Accuser on our Behalf, and the accused, and between the Approver who has confessed the Felony, and him whom he has appealed as his Accomplice, and between him who shall be found seized, and the Person vouched to warrant, for in these Cases, no Suit lies except ours.

XXIII. With regard to false Writs † or Writs disavowed, or Writs of false Judgment, found in any ones Possession, we will that such

* 3 Inf. 210.
St. P. C. 182.
2 Haw. P. C.
c. 48. f. 3, 4.
[f. 13. b.]
2 Hal. P. C.
p. 391.

† Brac. 119, b.
f. 2.—413. b.
f. 2.
Fle. 32, f. 1. &c.

(25) THAT HE GO QUIT. This was the ancient Form; but at this Day, when a Prisoner pleads Not Guilty, and is acquitted, the Judgment is only, *quod eat inde sine Die*, for was the Judgment to be *Quod sit inde Quietus*. Lord Chief Justice Hale thinks the Prisoner could never be arraigned again, notwithstanding the Insufficiency of the Indictment, till that Judgment of acquittal were reversed, for *Eat inde Quietus*, cannot go to the Insufficiency of the Indictment, but must go to the Matter of the Verdict. 2 Hal. P. C. p. 394.

(26) DRAWN, AND PUT TO DEATH, viz. Drawn and hanged; for Briton having in this Chapter, treated of Treason, in counterfeiting the King's Seals and Coin; the Judgment given at Common Law for those Crimes, was to be drawn and hanged, and not the solemn Judgment to be drawn, hanged, and quartered, which was pronounced against those only who were guilty of Treason of the deepest die. Hal. P. C. 351. 2 Hal. P. C. 398.

such Persons be arrested and detained in Prison, until they are (27) warranted, or those they have vouched, are either cleared, or outlawed, or if they have vouched such as are not known in the County, then our Will is, that they either acquit themselves by their Country, or be put to Penance; and if they vouch those, who cannot justify those Writs according to the Laws and Usuages of our Realm; let Judgment be given against the Vouchers, and if the Vouchee refuses to warrant, then such Course of Law, as shall be afterwards mentioned, is to be pursued.

XXIV. With respect to false Money, and Money (28) clipped || and counterfeited like ours, let such Measures be taken as † the Statutes concerning our Coin prescribe, and

§ Brac. 119. b.
f. 2.
Fle. 30. f. 122.
&c.—32, f. 4
&c.

|| 51 H. 3. c. 3.
3 Ed. 1. c. 15.
f. 3.

9 Ed. 3. c. 1.—
18 Ed. 3.
25 Ed. 3.

† 3 Inf. 47. 54.
Gl. 1. 14. c. 3.

Brac. 120. c. 4.
Fle. 33. c. 23.

Mir. c. 1. f. 9.
St. P. C. 1. 1.

c. 9.
Haw. P. C. c. 31.

Hal. P. C. p.
424.

(27) THEY ARE WARRANTED. *Bracton* illustrates this by the following short and perspicuous Case,

In the Eyre in the County of York, 10 H. 3. before *Martin de Patishull*.

Roger de Fanborne, and *Agnes* his Wife, brought into Court a certain Writ of Right, which was forged, to which the Party who had forged it, had contrived to affix a true Impression of the Seal; and because the said *Roger* could not produce any Voucher for it, he was hanged; but his Wife whether guilty or not, was discharged, because she was under the Controul of her Husband, *Brac. 414. a.* Note on *Fle.* p. 50.

(28) MONEY CLIPPED. The Editor of the first Book of *Fleta* in his Notes exhibits the following ancient Record, which it is apprehended will be acceptable to every studious Reader of our ancient Laws.

and according to what is laid down relating to false Writs found in any one's possession.

C H A P. V.

O F H O M I C I D E S.

Sect. I. **L**ET Inquiry also be made of Homicides, and Murders; and our Will is, that those who command, aid, or counsel, to kill others, be indicted, as well as the principal Actors in this Felony.

II. And in as much as this Felony may be committed under Colour of Judgment, † through

* 2 Inf. 182, 183.
3 Inf. 55. 138.
Brac. 121. f. 2.
Fle. 34. f. 7. &c.
Mir. c. 1. f. 9.
p. 33.—f. 13.
p. 98.
[f. 14. a.]
St. P. C. c. 43. &c.
2 Haw. P. C.
c. 29. f. 2. &c.
Hal. P. C.
p. 435.
† Brac. 120. b.
f. 2.
Fle. 33. f. 2.
Mir. c. 1. f. 9.
p. 30. c. 4. f. 16.
c. 5. f. 1. par
109.

Goal Delivery of *Newgate*, 30 Ed. 1. Roll 25.

London, ff. *Margaret de Blechynlegh*, *Isabella de Hankesdone*, and *John de Luci*, being apprehended for clipping of Money, weighing Two-pence Half-penny, which had been found upon the same *Margaret*, in a Market in *London*, and which she had offered to Sale to a Goldsmith there.

They come before, &c. And being asked, What Defence they had to make. The aforesaid *Margaret* says, That she found the said clipped Money in a certain Kennel in the Ward of *Thomas Romeyn*, as she was going to the Bridge; and that she did not come by it any other Way, maliciously, nor against the Peace; they all put themselves for Good, or for Bad, upon the Country, and are acquitted. Note on *Fleta*, p. 46. f. 126.

§ Mir. c. 1. f. 9. through (1) Malice of the Judge, or under
 p. 36. 136. 255. other Colour, as by unskilful (2) Phyfi-
 St. P. C. 1. 1. cians, § and bad Surgeons, and by || Poi-
 c. 9. son, and fundry other Ways; our Pleasure
 Haw. P. C. c. 32, f. 62. is, that all those who have thus privily com-
 Hal. P. C. p. 429. mitted such Felonies be indicted, as well
 || 3 Inf. 48. as those who falsly for (3) Hire, † or in
 Brac. 121. f. 2. any other Manner, by taking a false (4)
 Fle. 34. f. 10, 11. Oath, * have condemned, or caused to
 Mfr. c. 1. f. 9. be condemned, any Man to Death.
 P. 33. † 3 Inf. 48.
 Mir. c. 1. f. 9. p. 36.
 * Mir. c. 1. f. 9. p. 34. 36.

III. According to the Presentment of this Article, let it be commanded, that all those who are indicted be apprehended; and if any one be suspected of this Crime, and dwells out of the County, let his Lands * be immediately seized, and his Chattles appraised, and delivered to the Townships; and afterwards put in exigend until he appears or is outlawed.

IV.

(1) MALICE OF THE JUDGE. See a List of the Justices and others said to have been hanged by King *Alfred*. Mir. c. 5. p. 296.

(2) PHYSICIAN. If a Physician gives a Person a Potion without any Intent of doing him any bodily Hurt, but with an Intent to cure, or prevent a Disease; and contrary to the Expectation of the Physician he kills him, this is no Homicide; and the like of a Chirurgeon, whether the Physician or Chirurgeon be licensed or not; for Physic and Salves, were before licensed Physicians and Surgeons. Hal. P. C. p. 429.

(3) FOR HIRE. This is Murder before God; but at this Day, not Murder in the Eye of the Law. 3 Inst. 48.

(4) FALSE OATHES. This Offence is not now capital. See 5 *El.* 2 G. 2. c. 25. 9 G. 2. c. 18.

IV. And when any Felons appear in Judgment to answer to their Felony, our Will is, that they come barefooted, (5) ungirt, uncoifed, and bare-headed, in their Coat only, without Irons, * or any Kind of Fetters, so that the Pain thereof may not in the least deprive them of their Reason, nor they be constrained to answer by Force, but of their own free Will; and afterwards agreeable to the Presentment against them, let them be indicted.

* 2 Inf. 381.
3 Inf. 34.
Brac. 105. c. 6.
—137. f. 3.
Fle. 39. f. 5.
Mir. 13. c. 2.
f. 9.—288. no.
54.
St. P. C. 78.
c. 19.
Hal. P. C. p. 601.

V. And if they are found guilty, let their Judgment be Death for Death, and let their moveable Goods be forfeited to us, § and their Heirs disinherited; their inheritances also of whomsoever they are holden, shall remain a Year † and a Day in our Hands, (6) on Condition we neither cause the Tenements to be raised, nor the Woods wasted, nor the Meadows plowed up, as we were wont to do, in Detestation of the Memory of Felons attainted, except such Tenements, as were neither vested in the the Felons, nor they were seized of in their Demesne as of Fee; for of such

Lands

§ 1 Inf. 390. b.
3 Inf. 19. 21. 47.
211, 227, 228.
St. P. C. 191. a.
195. c. 34.
[f. 14. b.]
2 Haw. P. C.
c. 49.
Hal. P. C. p. 359.
363.
† Mag. Ch. c. 22.
2 Inf. 36.
3 Inf. 111.
Gl. 1. 7. c. 17.
p. 59.
Brac. 129. f. 10.
&c.—137. f. 2.
Fle. 43. f. 5. 6.
8.
St. Præ. Reg.
48, 49, 50.
St. P. C. 190.
c. 30.
2 Haw. P. C.
c. 49. f. 8.
Hal. P. C. p. 360.

(5) BARE FOOTED. This is not required now.

(6) A YEAR AND A DAY IN OUR HANDS ON CONDITION. Since the Statute *Præ. Regis* 17 Ed. 2. the more general Opinion has been, that the King has a Right to the Year and Day, and also to the Waste, that Stat. not being contrary to the express Words of Mag. Chart. c. 22. but only to what is argumentatively drawn from it, 2 Haw. P. C. p. 449. f. 8.

(7)

*St. P. C. p. 191.

§ 1 Inf. 390. b.

Brac. 12. b. f. 5.

—29. b. f. 13.

129. f. 8. 19.

Fle. 43. f. 4.—

178. f. 11.

St. P. C. 191.

c. 31.

2 Haw. P. C.

c. 49. f. 30.

Hal. P. C. p. 360.

† 1 Inf. 6. b.

Brac. 137. a. f. 4.

5. 143. f. 1.

Fle. 47. c. 31.

f. 2.

2 Haw. P. C.

p. 76. f. 12.

St. P. C. 179. a.

b.

Lands as they held for Term of Life, or Years, (7) or by fresh Disseisin, * or in fee farm, rendering Annually the true Value, or in Mortgage on like Condition, we will take nothing; we will also that their Lands alienated § after Commission of their Felonies, be Escheat to the Lords of the Fees, so that immediately after Sentence pronounced against them, it shall be lawful for those Lords to demand the Tenements so alienated, by our Writ of Escheat.

VI. If any Man be found killed, and another be found near him with a Knife, or other Weapon in his Hand all bloody (8) whereby it is † suspected that he killed him, the Coroner must be immediatly sent for

(7) FOR TERM OF LIFE OR YEARS. If Tenant in Tail, or for Life, or the Husband seized in Right of his Wife, be attaint of Felony, the King shall have the Year Day and Waste against the Wife, the Issue in Tail, and him in Reversion. *Hal. P. C. p. 360.*

Lord and Tenant. Tenant is attaint of Petit Treason, or Felony. Escheat of the Land of the Tenant with the Charters of the Land, belong to the Lord; but Goods, Leases for Years or Life, and Choses in Action belong to the King, and Year Day and Waste. *13 Kin. Ab. p. 444. pl. 5.*

(8) WEAPON ALL BLOODY. This the Editor of *Fleta* exemplifies from the following ancient Record.

Pleas in Eyre at Gloucester, 5 H. 3. Roll 19.
Hundred of Bradelegb.

ff. *Wakellm* Son of *Ranulph* a Baker, murdered *Martill la Dye*, with a certain Knife, and was taken in the Fact with the Knife all bloody; and this being proved by the Township and twelve Jurors, he could not deny it. Hanged. He had no Chattles. Note on *Fleta*, c. 31. *2. p. 72.*

for, and the Felon, the Coroner being present, shall, upon the Testimony of those who saw the Felony, be judged to Death ; so where a Person is found in a House, or other Place, with one murdered, and such person is neither hurt, or wounded, nor raised the Hue || and Cry, (9) nor took any Steps towards bringing the Felons to Justice, he shall be condemned to die. § 3 In. 116. 117. [f. 15. a.]

VII. Our Pleasure also is, that the Heirs of Felons, born before the Felony committed, be disinherited of every Kind of Inheritance, § which may fall to them on the Part of the Blood of the Felon attainted by Judgement ; and Heirs after the Felony committed, shall be excluded from all Manner of Succession to the Inheritance, as well on the Part of the (10) Mother, † as on the Part of the Father ; the Wives § 1 In. 8. 390. Brac. 130. f. 19, 20. Fle. 43. f. 4. St. P. C. 195. c. 34. 2 Haw. P. C. c. 49. f. 47. &c. Hal. P. C. p 354. † 1 In. 12. 3 Co. 41 a.

E 2 also

(9) NOR RAISED THE HUE AND CRY. At this Day, If a Man be present when another is murdered, or robbed, and doth not endeavour to attach the Offender, nor levy Hue and Cry, he shall be fined, and imprisoned. 3 Inj. 117.

(10) AS WELL ON THE PART OF THE MOTHER. It seems to be the better Opinion, that where a Person attainted hath Issue by a Woman seized of Lands of inheritance, such Issue may inherit the Mother, tho' he never had any inheritable Blood from the Father. 2 Haw. P. C. P. 457. f. 49.

† In. 31. 37. 41.
392. b.
3 In. 47. 211.
Brac. 130. b.
f. 23. — 311.
f. 12.
Fle. 347. f. 6.
St. P. C. 194.
c. 33.
2 Haw. P. C.
c. 49. f. 42. &c.
Hal. P. C.
p. 359.

also of Felons shall not be endowed in † any
Lands or Tenements assigned them by such
Husbands.

CH A P. VI.

Of M U R D E R.

* 1 Inf. 287. b.
2 In. 148.
3 Inf. 47.
Gl. 1. 14. c. 3.
Brac. 121. c. 4.
— 134. c. 15.
Fle. 34. f. 6.
— 46. c. 30.
St. P. C. c. 10.
Haw. P. C. c.
31.
Hal. P. C. c. 35.
† Brac. 134. b.
f. 3.
Fle. 46. f. 1.
Mir. c. 1. f. 13.
p. 104.

Sect. I. * **M**URDER (1) is the felonious
secret killing of a Person (2)
without being able to discover by whom
it was committed.

II. And our will is, that for every Mur-
der, the Hundred † in which it was com-
mitted

(11) HOLD NO LAND IN DOWER. By the 1 Ed. 6.
c. 12. and 5 Ed. 6. c. 11. though the Husband be at-
tainted of Felony or Murder, the Wife shall not lose her
Dower; but in High Treason, and Petit Treason she
shall, except in such Cases where it is saved by any Sta-
tute. *Hal. Pl. p. 359.*

(1) MURDER. Our Reader cannot but observe that
in the Days when *Glanvil*, *Bracton*, *Britton*, *Fleta*, and the
Mirror wrote, Murder signified only the private killing
of a Man by one who was neither seen nor heard by any
Witness, and that the Offence we call Murder, was ex-
pressed by them by voluntary Homicide. *Haw. P. C.*
c. 29. f. 22.

(2) FELONIOUS SECRET KILLING OF A PERSON. *Oc-
cultus Hominum Occisio*, as *Bracton* and *Fleta*, express it, or
disconnu may be applied to the Person, and then it will
signify the felonious killing of a Person unknown. *Bract.*
134. b. f. 3. *Fle. 46. f. ...*

mitted be amerced, (3) and if the Fact is found to have been committed in two Hundreds, let both the Hundreds be amerced in proportion to the extent of each Hundred.

III. And it shall not be § adjudged Murder where any of the Kin to the deceased can be found, who can prove that he was an Englishman, and make Presentment of such (4) Englesherie; || nor altho'

§ Brac. 135. f. 5.
6.
Fle. 46. f. 2.
Mir. c. 1. f. 13.
p. 104.

the

|| Brac. 134. b.
f. 3. 4. 7.
Fle. 46. f. 2.
Mir. c. 1. f. 13.
p. 104.

(3) AMERCED. *Brac.* 134. b. f. 3. says, The Hundred shall be amerced sixty-six Marks; but it appears by the Laws of *Edward* the Confessor, l. 15. & 16. that the Amerciament was XLVI Marks, and not LXVI, which Mistake might probably be occasioned as Mr. *Wilkins* observes by the Transposition of the Numeral Letters L and X. Note on *Hal. P. C.* p. 447.

The 26th Law of *Wm. I.* says XLVII Marks.

(4) ENGLISHERY. This Custom of presenting Englesherie, is illustrated by a very ancient Record, which the Editor of *Fleta*, first presented to the Public.

Pleas of the Crown in the Time of King *Richard*.
Roll 1.

Hundred of *Stofield*.

ff. The Jurors say, that *Walter de Ebelhamt* killed *William de ———*, and the same *Walter ———* and Engleshire was presented at the Hour and Place by two only, because there were no more of his Kindred. *Avice*, the Mother of the deceased, appealed *Osmund* Brother of the said *Walter*, who was apprehended and committed to the Gaol of *Sarum*, which Gaol Earl *John* broke in the Time of War, by which Means the said *Osmund* and others then made their Escape; and *Osmund* took his Pilgrimage towards *St. James's*. * *Walter de Ebelhamt* was in the Tithing of *Geoffry* Son of *Hudebrad*, and *Osmund* in the same, *Walter* is outlawed at the Suit of *Avice* the Mother, and the Vill of *Ebelhamt* pursued him till

* *St. James of Compostella*, Capital of *Galicia* in Spain, famous for the extraordinary Concourse of Pilgrims that resort thither to visit the Apostle *St. James's* Body, which the *Spaniards* pretend they have there.

[f. 15. b.]

1 Marl. c. 26.

2 In. 148.

3 In. 54. 56.

Brac. 120. b. f. 2.

—136. b. c. 17.

Fle. 34. f. 5.—

46. f. 2.—47.

f. 4.

Mir. c. 1. f. 13.

p. 104.

the Person killed was an Alien, if he lived so long as that he himself excused (5) the Felons, nor where any Felon shall be apprehended for the Fact, nor in case of † Mischance, (6) nor where any Man shall have taken sanctuary for the Felony, nor in any Case where the Felon shall be known, so that the Felon may be punished by Outlawry, or other ways attainted, nor where two or more

it was so dark they could see no longer. *William Malewain* and *Geoffry Blundus* were Pledges for the said *Osmund's* being amesnable to Justice, if he returned from his Pilgrimage; and as they have not him before the Justices, they are in Mercy. *William Malewain* and *Geoffry Blundus* amerced for not having him forthcoming, for whom they were Pledges. Note on *Fleta*, c. 30. p. 71.

(5) EXCUSED, i. e. according to *Bracton* and *Fleta*, if he lived so long as that he might have discovered who the Felons were, whereby it might appear, whether he was an Englishman, or a Frenchman, for this would excuse the Hundred; unless our Author by *Excuse* means forgiving the Murderer. *Brac.* 135. f. 5, 6. *Fle.* c. 30. f. 2. *Mir.* c. 1. f. 13. p. 104.

(6) IN CASE OF MISCHANCE. Before the Stat. *Marl.* it was the Custom in some Parts of *England* to amerce the Hundred, though the Homicide was casual, as appears by *Brac.* 135. b. and the following ancient Record.

Pleas of the Crown in the County of *Gloucester*, in the 32d. Year of *H.* 3. Roll 2.

Hundred of *Bradete* comes by xii.

R. *Walter Condiga* was found starved to Death in the Fields of *Brochampton*; the first Finder dead, no one suspected. No *Engleshire*. Therefore Murder upon the Hundred.

But the Stat. *Marl.* settled this Point, as appears from another very antient Roll, viz.

Plea

more Persons have feloniously (7) killed each other, whether they be unknown or Aliens.

C H A P.

Pleas before the Justices in Eyre at *Cambridge* in the 45th Year of the Reign of King *Henry*, Son of King *John*, Roll 22.

ff. The whole County testifies, that *Engleshire* is presented in this County by one of the next of Kin of the Part of the Father, and one of the Part of the Mother. And inasmuch as it is lately provided by the Counsel of the Lord the King, that for the future within the Realm, whenever the Presentment is Casual Death only, it shall not be adjudged Murder but deemed only so in Cases where the Killing is Felonious, and not otherwise; therefore for the future, let no *Engleshire* be presented, except where a Person is feloniously killed in Form aforesaid, &c.

* From this Record of the 45 *H. 3.* we may remark by the Way, that the Stat. *Marl.* was not made in the 52 *H. 3.* as it stands in the printed Statutes, but before; and the close Roll of 44 *H. 3. M. 17.* on the Back manifestly proves, that it was not enacted the 52 *H. 3.* but in 43, and moreover, not at *Marlbrige*, but at *Westminster*.

Note on *Fle. c. 34. p. 70, 71.* — *Prynn's Animadversions* on 4 *Inf. p. 190.*

(7) FELONIOUSLY KILLED EACH OTHER. The *Mirror* says, Where one is Felo de fe. *Mir. c. 1. f. 13. p. 104*

C H A P. VII.

O F M I S C H A N C E.

§ 3 In. 57. c. 9.
Brac. 120. b.
f. 2.—122. f. 7.
§. 136. c. 17.
Fle. 37. f. 9.
Mir. c. 1. f. 9.
p. 32.—c. 1.
d. 13. p. 47.
St. Pl. C. 1. 1.
c. 8. 12.
Hal. P. C. p. 471.
Haw. P. C.
c. 26.

Sect. I. **A**N Accident is that which occasions the Death of a Man without Felony ; as where People die suddenly by any Sicknefs, or fall into the Fire, or into the Water, and there lie until they are Dead ; a Mifchance is where a Man is killed by a Fall from a Tree, Ship, Gate, Cart, Horfe, Mill, or the like, where no Felony is committed, and in which Cafe, there is no need of raising the Hue and Cry, or making any Presentment by the Kindred of the deceased, or by the Township at the next County, but the Coroner's Inquest is fufficient.

* 3 Inf. 57.
 † 1 Inf. 114.
 3 In. 54. 55.
 Brac. 150. c. 31.
 Fle 54. c. 36.
 Mir. c. 1. f. 13.
 p. 48.
 St. P. C. 19.
 c. 11.
 Haw. P. C. c. 27.
 Hal. P. C.
 p. 411.

II. And in fuch Mifchances, the Things which caufed the Death fhall be adjudged to us as Deodands,* as is mentioned before in the Chapter concerning the Office of a Coroner.

III. And where a Man is *Felo de fe* † his Chattles fhall be forfeited (1) to us, as

(1) HIS CHATTELS SHALL BE FORFEITED. But the Forfeiture fhall relate only to the Death. *Hal. P. C. c. 27. f. 7, 8.*

as the Chattels of Felon, but his Inheritance [f. 16. a.] shall descend to his heirs. (2)

CHAP. VIII.

OF TREASON.

Sect. I. **T**REASON § is every Mischief, which a Man knowingly does, or procures to be done to one he is in Duty bound to be a Friend to.

§ Mir. c. 1. f. 7.

II. And Treason is either High || or Petit Treason; of which, some are punished by Judgment of Death, some by loss of Limb, Pillory, or Imprisonment, and others by a still slighter punishment, as the Nature of the Case requires.

|| 25 Ed. 3. c. 2.

3 Inf. c. 1.

Gl. 1. 14. c. 1.

Brac. 104. b. c.

5.—118. c. 3.

f. 1 2.

Fle. 1. 1. c. 21.

22.

Mir. c. 1. f. 4. 6.

St. P. C. 1. 1.

c. 2.

III. Haw. P. C. c. 17.

Hal. P. C. c. 11.

p. 76.

(2) INHERITANCE REMAIN WITH HIS HEIRS. His Wife also shall be intitled to Dower, and his Blood shall not be corrupted. *Haw. P. C. c. 27. f. 7, 8.*

(1) TREASON. By the various Expressions of *Britton* in this and other Chapters, relating to Treason, it appears, that the Crime of High Treason was very uncertain; sometimes styled under the Name of Felony, sometimes had the Punishment of Petit Treason applied to the Crime of High Treason, and some Crimes mentioned as Treasons, which were not so taken by *Bracton* or *Fleta*; and indeed it appears, that at Common Law there was a great Latitude used in raising of Offences into the Crime and Punishment of Treason, by Way of Interpretation and arbitrary Construction, which brought in great Inconvenience and Uncertainty.

‡ 3 Inf. 5. 12.

* 3 Inf. 6. 9.

H. P. C. 179.

† 3 In. 15.

§ 3 Inf. 16.

|| 3 Inf. 19.

Mir. c. 1. f. 7.

Fle. 54. c. 36.

f. 4.

III. High Treason is to compass ‡ our Death or to disinherit * us of our Kingdom, or to falsify our † Seal, or to Counterfeit our § Coin, or to Clip it ; a Person may also commit High Treason || against others several Ways, as by procuring the Death of any one who is seised of him ; as for Instance, those who Poison their Lords or others, and those who draw Persons into such Perils, as that they lose Life and Member or Chattles.

‡ 3 In. 169.

IV. The Judgment ‡ in High Treason is to be drawn and to suffer Death for the Felony

To remedy these great Inconveniencies and Uncertainties, the Lords and Commons in Parliament petitioned King *Edward* the 3d. in the 25th Year of his Reign, that he would be pleased to declare by his Counsel, and by the great and wise Personages of the Realm, what the Points of Treason were.

The King accordingly answered this Petition, and declared what should be Treason. And the Statute of 25 *Ed. 3. c. 2.* was drawn up upon that Petition and Answer, and differs nothing in Substance from the Answer to the Petition on the Parliament Roll ; for which, and other excellent Laws made at this Parliament, this was called, The blessed Parliament. See the Petition, Answer, and Statute. *Hal. P. C. p. 87.*

All Treasons were intended to have been settled by this Act, yet between this and the 1 *Mar. ses. 1. c. 1.* Many other Offences had been made High, or Petit Treason, or Misprision of Treason. However, by the Act of the 1 *Mar.* all Statutes between the said 23 *Ed. 3.* and 1 *Mar.* which made any Offences High, or Petit Treason, or Misprision of Treason, are abrogated, so that no Offence is at this Day to be esteemed High Treason, unless it be either declared to be such by the said Statute of 25 *Ed. 3.* or made such by some Statute since 1 *Mary.* 3 *Inf. p. 2.* *Hal. P. C. p. 79.* *Haw. P. C. p. 34.*

Felony, and the same Judgment ought to be given, against those who in appeals of Felony, are attainted for having counterfeited or otherwise falsified the Seal * of their Lord, of whose dependance, or Homage they are, or for having committed Adultery with the Wives of their Lords, or for deflowering the Daughters of their Lords, or the Nurses of their Children; and if a Woman be attainted of any Treason, let her be † burnt. (2)

* 3 Inf. 20.
Brac. 105. c. 16.
Fle. c. 22. f. 1,
37. f. 4.
Mir. c. 1. f. 7.
[f. 16. b.]

V. Let those who are attainted of Crimes of this Nature at our Suit, as for falsifying the Seal, if the Fact § be of small Consequence, have Judgment of Pillory only, or lose an Ear; but if the Fact be enormous, and heinous, as touching Disinheritance, or lasting Damage, they shall then be judged to Death, and of other Offences let holy Church have Correction.

† 3 In. 211.
Brac. 105. c. 6.
Fle. 54. c. 37.
§ 3 In. 169.
Brac. 104. b.
c. 6. — 155. c.
36.
Fle. 63. c. 1.
Mir. c. 4. f. 12.
17.

C H A P.

(2) BE BURNT. Though *Bracton* nor *Fleta* set down the precise Punishment for the Crime of Arson, but say only, that the Offenders are to suffer Capital Punishment, yet it appears by the *Mirror*, c. 4. f. 15. p. 253. and by the Record of the 5th of *Hen. 3.* that the same Judgment used to be given as *Britton* here pronounces. See the Record, Note 19. p. 40.

The Punishment of Arson at this Day is only Hanging. See the Statutes relating to Arson. *Barn. Inf. Tit. Burning.*

|| 2 In. 147. 188.

3 Inf. 66.

II Co. 29.

Gl. l. i. c. 2.—

l. 14. c. 4.

Brac. 146. b.

c. 27.

Fle. 54. c. 37.

f. 1.

Mir. c. 1. f. 8.—

c. 2. f. 14.—

c. 3. f. 17.—c. 4.

f. 15.

St. P. C. 36. c. 33.

Haw. P. C. c. 39

Hal. P. C.

p. 566.

§ 3 In. 44.

Fle. 54. c. 37.

f. 2.

Mir. c. 1. f. 4.

p. 22.

St. P. C. l. i.

c. 39.

Haw. P. C. c. 3.

|| 3 Inf. 58.—

Hal. P. C. p. 669.

Haw. P. C. c. 4.

Fle. 46. f. 7.

45. c. 37. f. 3.

Mir. c. 1. f. 4.

p. 21.—c. 2.

f. 11. c. 2. f. 22.

p. 141.—c. 4.

f. 14. p. 252.

† 3 Inf. 43.

Brac. l. 3. c. 9.

f. 2.

Fle. 54. c. 37. f. 2.

Mir. c. 1. f. 4.

p. 22.—c. 4.

f. 14. p. 252.

Haw. P. C. c. 2.

Hal. P. C. p. 383.

C H A P. IX.

OF A R S O N S.

Sect. I. **L**ET Inquiry also be made of those who in time of Peace have feloniously burnt others Corn or Houses, and those who are attainted thereof shall be burnt, so that they may be punished in the very same Manner in which they offended, and let Sorcerers, (1) & Sorceresses, and || Sodomites, (2) and † Hereticks (3) publickly convicted, receive the same Sentence.

C H A P.

(1) SORCERERS. Sorcery when *Britton* wrote, being taken to be a Branch of Heresy, the Persons guilty of it were punished in the same Manner as Hereticks. 3 *Inf.* 44. And now, though Sorcery is not believed, yet the Pretending to exercise it is punished by Imprisonment and Pillory. 9 *G.* 2. c. 5. f. 2.

By the following antient Record, in the Reign of King *John*, never before published, it appears, that at that Time of Day, there was an Appeal of Sorcery, as well as of other Crimes.

Pleas at *West.* on the Octaves of *St. Hil.* 10. King *John*, Roll 8. on the Back.

Agnes Wife of *Odo* a Merchant, appealed *Galiens* of Sorcery, she is cleared by Judgment of Iron, therefore *Agnes* remains in Mercy. Mss. in Lat. in Lin. Inn. Libr.

(2) SODOMITE. When *Fleta* and the *Mirror* wrote, the Punishment of Sodomites was by burying them alive, instead of burning them. *Fleta* c. 37. f. 3. p. 54. *Mir.* c. 4. f. 14. p. 252.

It is now hanging.

(3) MISCREANTS. i. e. Hereticks. 3 *Inf.* 43.

The Writ *de Hæretico comburendo*, and all Proceedings thereon

C H A P. X.

O F B U R G L A R S.

Scct. I. **L** E T Inquiry be made of Burglars, under which Denomination come all those who † feloniously in time of Peace, (1) break Churches, or the Mansion & Houses of others, or the Walls, or Gates of our Cities, or of our Boroughs, except Infants under the Age of Discretion, and poor People, who thro' (2) Hunger ||

enter

† 3 In. 63.
Brac 144. b.
Fle. 34. f. 14.
[f. 17. a.]
Mir. 43. c. 1. f. 11.
St. P. C. 30.
c. 24.
Haw. P. c. 38.
Hal. P. C.
p. 547.

§ 3 In. 64.

|| Mir. c. 4. f. 16.
p. 262.

thereon, and all capital Punishments in Pursuance of ecclesiastical Censures, are by the 29 Car. 2. c. 9. utterly abolished, so that Heresy is now punishable only with Excommunication (except in the Case of a Clergyman, who is also to be deprived and degraded) the civil Effects of which are, that the Party excommunicated is disabled from making a Will, or from suing for any Debt, or Legacy, or doing any legal Act. And if the Party do not submit within forty Days after Publication, upon a Significavit into Chancery; there issues a Writ, de Excommunicato capiendo, by Virtue of which he may be arrested and detained in Prison till he do submit. Note on Hal. P. C. p. 410.

(1) IN TIME OF PEACE. When it is *Tempus Belli* within the Kingdom, and one Enemy, either steals, robs, or plunders the House, or Goods of another, these Offences, being done by an Enemy, put on another Name, as Acts of Hostility, Misprisions, and the like. Hal. P. C. p. 565.

(2) THROUGH HUNGER. This must not pass for Law in a Country where there is such Relief provided for the Poor; but though it will not serve as a Plea in Justification, yet as the Relief is not always speedy, it is but reasonable it should be allowed as an Argument for Mercy. Hal. P. C. p. 565.

† Mir. c. 3, f. 20.

enter the House of another for Victuals, and that under the Value of twelve Pence, except also Ideots, and Madmen, and such others, as are incapable of being guilty of Felony ; but we do not reckon among Burglars, those † who enter into any Tenement in the Name of Seisin in Maintenance of some right they think they have ; let such Felons be adjudged to Death.

CHAP. XI.

Of * PRISONS.

* St. 1, Ed. 2.

2 Inf. 589.

Brac. 124. f. 4.

Fle. l. 1. c. 26.

Mir. c. 2. f. 9.—

c. 4. f. 25.

St. P. C. l. 1.

c. 25.

2 Haw. P. C.

c. 18.

Hal. P. C.

p. 607.

2 In. 100. 188.

St. P. C. 31.

Sect. I. **L**ET Inquiry also be made of those who have broke our Prison, for to escape from the Prison of another (1) is no Felony.

II.

(1) FROM THE PRISON OF ANOTHER. *Stamford* in his Pleas of the Crown 31 d. concurs in Opinion with our Author, that it was not Felony at Common Law to break any, but the King's Prison ; but by the Statute of 1 Ed. 2. it matters not, whether it be the King's Prison, or the Prison of a Franchise ; for it speaks de Prisons generally, and not de Prisons nostra ; however, as it must be intended a legal Prison, which cannot be without a Grant from the Crown, the Construction of Lord Chief Justice *Hale*, that all such Prisons should be taken as to this Purpose, to be the King's Prisons, is very reasonable. Note on *Hal. P. C.* p. 608.

(1)

II. We will that a Prison be accounted a Place limited by us within certain Bounds for the Keeping the Bodies of Men, which Bounds we forbid any one to pass with a felonious Intent of escaping on Pain of Death; and if any one, having such * Intent, is taken and attainted of Compassing that felonious Intent, let him receive Judgment of § Death. (2)

*Brac. 124. c. 9.
f. 4.
Fle. c. 26. f. 4.
p. 39.
§ Mir. c. 5. f. 1.
p. 8.
[f. 17. b.]

III. If the Prisoner was [in the Custody of any one claiming the Wardenship in Fee, let the Franchise be seized into our Hands.

IV. And if the Prisoner, who made his Escape, escape out of the Custody of any one of our Ministers, let that Minister, at the Eyre of the Justices, be || amerced (3) to 100 s. And if he who thus escaped, was

|| 2 Inf. 28.
Hal. P. C.
p. 600.
an 2 Haw. P. C.
c. 19. f. 28.

(2) JUDGMENT OF DEATH. Well might the *Mirror*, who wrote before the 1 Ed. 2. complain of the great Severity of the Common Law in this Point; but this was soon after moderated by the Statute de Frangentibus Prisonam, which is as follows, "Concerning Prisoners, which break Prison, the King willeth and commandeth, that none that breaketh Prison shall have Judgment of Life or Member, for breaking of Prison only, except the Cause for which he was taken and imprisoned did require such Judgment, if he had been convict thereupon, according to the Law and Custom of the Realm."

1 Ed. 2. St. 2.

The Felony of Breach of Prison, is a Felony within Clergy, though the principal Felony for which the Party was convicted were out of Clergy, as Robbery, or Murder. Hal. P. C. p. 612.

(3) BE AMERCED. Britton is here treating of negligent Escapes, the Punishment of which is Fine or Amerciament, 2 Haw. P. C. c. 19. f. 28. 5 Ed. 3. c. 8. 19 H. 7. c. 10.

(4)

* 3 Inf. 91. 129.
Hal. P. C.
c. 600.
2 Haw. P. C.
c. 20.

|| Ha'. P. C.
p. 590.
2 Haw. P. C.
c. 19. f. 22.

† 2 Inf. 316.
381.
3 Inf. 34. 209.
Brac. 104. c. 6.
—137. f. 3.
Fle. 39. f. 4.—
47. c. 31. f. 1.
Mir. c. 2. f. 9.
—c. 5. f. 1. p. 54.
Fort de Laud.
leg. ang. c. 22.
* 2 Inf. 381.

an Approver, * let the Warden be fined at our Will ; and if it be a Vill that the Prisoner escaped from, let such Vill be in our Mercy (4) in the Eyre of the Justices, according to the Custom of the Country ; and if from the Custody of a private Person, (5) let such Person be amerced ; and if any Gaoler be suspected of having || consented to the Escape, let him be taken and indicted for consenting to the Felony ; and if he is found Guilty of consenting, let him have Judgment of Death. (6)

V. As to Prisoners, † we will that none be put in Irons, but such as have been apprehended for Felony, or Trespases committed in Parks, or Vivaries, and those who have been found in Arrear upon * Account ; and we forbid their being punished, or tortured, in any other Manner, than

(4) VILL BE IN OUR MERCY. Unless it has the Franchise, or Liberty, to be quit de Escapiis. *Hal. P. C.* p. 604.

(5) PRIVATE PERSON. But if a private Person arrest a Felon, and he escape by Force from him, without any Default in him, though the Township shall be amerced, yet it seems it excuseth the Party, for he being a private Person, cannot raise Power to take or detain a Felon. *Hal. P. C.* p. 601.

(6) CONDEMNED TO DIE. Since the Statute de Frangentibus Prisonam, a voluntary Escape, which is here treated of, is not punishable, only in the same Degree as the Offence of which the Party was guilty, and for which he was in Custody ; therefore not with Death, unless the Offence was Death ; and he who suffers another to escape, who was in his Custody for Felony, cannot be arraigned for such Escape, as for a Felony, until the Principal be attainted. 2 *Haw. P. C.* c. 19. f. 22, 26.

than by (7) Law they ought, and that none disseise them whilst they are in Prison, of any Thing which belonged to them.

VI. As to their Lands & Goods, let those be seized into our Hands, but without any Ouster ; and let the Prisoners and their Families, be supported out of their own † Chattels as long as they remain in Prison, and let none of their Bailiffs be removed, or others put in.

VII. And when they have lawfully acquitted themselves, let all that was theirs be delivered back to them ; and if any thing belonging to them shall in the mean Time have been embezilled, we will in such case afford our especial aid to recover it, and to punish the Offenders.

VIII. But if Judgment of Death pass upon them, our Will is then, that for the first Time our Ministers put out their Wives and their Bailiffs, and seize their Chattels and Lands into our Hands, and let their move-

§ Britton. fo. 4. b.

[f. 18. a.]

† Mag. Ch. c. 29

1 Ric. 3. c. 3.

1 Inf. 391.

2 Inf. 207.

3 Inf. 228.

Brac. 123. f. 5.

136. c. 18. f. 1.

Fle 38. f. 1. 2.

Mir. p. 101, 105.

St. P. C. 52.

192. b.

2 Haw. P. C.

c. 49. f. 33. &c.

Hal. P. C.

p. 359. &c.

(7) THAN BY LAW THEY OUGHT Therefore this Liberty of putting a Prisoner in Irons can only be intended where the Officer has just Reason to fear an Escape ; as where he is unruly, or makes any Attempt to that Purpose ; but otherwise, notwithstanding the common Practice of Gaolers, it seems altogether unwarrantable, and contrary to the Mildness and Humanity of the Laws of England, by which Gaolers are forbid to put their Prisoners to any Pain or Torment. Note on *Hal. P. C.* p. 601.

The *Mirror* says, the Fetters ought not to weigh above twelve Ounces. *Mir.* c. 2. f. 9.

F

* 3 In. 228.

moveable Goods be taken by inquest of Office of the Coroner, and delivered to the * Townships, who shall be answerable to us in the Eyre of the Justices.

+ 3 Inf. 52. 91.

Fle. 39. f. 5.

Mir. c. 1. f. 9.

p. 33. 34.

2 Ld. Ray. 1578.

IX. And if any Person die in † Prison, our Pleasure is, that the Coroner go and view the Body and take a true Inquest of his Death, and if the Inquest find that his Death was hastened by the Dureffs of his Goaler, or by (8) Punishment inflicted on him, by one who had no Right so to do; then let the Body be buried, and let all those, who are indicted, as being the Cause of his Death, be immediately apprehended and detained as Felons Homicides.

|| 2 In. 43. 315.

4 In. 168.

X. And we Will, that in Times pleadable, our Goals be || delivered one Day in every (9) Week, of all Prisoners deliverable, except such as are not to be delivered (10) without our special Command.

XI.

(8) PUNISHMENT. By the *Mirror*, if a Prisoner was pained so much as to make him confess, and turn an Approver, by which he falsely acknowledged himself to have offended, and made him appeal innocent Persons of the Crime, this was a sufficient Foundation for an Appeal of Murder. *Mir. c. 2. f. 15. p. 136.*

And by the 14 *Ed. 3. c. 10.* If the Prisoner become an Approver against his Will, whether the Appellees be acquitted or attainted; If it be by Dureffs of Imprisonment, and against the Will of the Prisoner, it is Felony.

3 *Inst. 91.*

(9) WEEK. Compare *Britton p. 2. b.* and Note 24 thereon.

(10) WITHOUT OUR SPECIAL COMMAND. It has been held in several Books, that Justices of Gaol Delivery, as such, have no Power to deliver the Gaol of Persons

XI. Our Will also is, that all Prisoners be [f. 18. b.] answerable to such as shall implead them as long as they remain in Prison, and let others likewise be answerable to them, and that Essoyns be allowed to them, as well as other People, neither shall they lose any thing by any Default; but as to Prisoners, apprehended for Felony, we will by no Means suffer them to implead, or be impleaded by any one, but for the greater Felony, so that the greater be not stifled or drowned by the lesser; and our Will is, that such Prisoners may allege, as an Exception in every lesser Plea whereof they shall be impleaded, not being the Cause for which they have been apprehended, (whether the Plea be moved against them before their being apprehended or after) that they are not bound to answer such Pleas, until they be acquitted of the greater Offence for which they are detained.

F 2

XII

sons committed for High Treason, perhaps for this Reason, because this being a Crime of so high a Nature, and against the King himself, shall not be included in the general Words of a Commission, nor tried without the King's special Direction; and this Opinion seems to be much favoured by the Preamble of the Statute of 3 H. 5. c. 7. yet the contrary Opinion is not only warranted by very great Authorities, but also it seems more agreeable to Reason. See the Reasons offered by Lord Chief Justice Hale, and Serjeant Hawkins. 2 Hal. P. C. p. 35. 2 Haw. P. C. c. 6. f. 4.

In the Days of King *Edward 1.* Lord *Coke* says, The Justices of Gaol Delivery, would not proceed in Case of the Death of a Man, without the King's Writ. 2 Inst. 43.

XII. We forbid also any one to take Money § or the Value thereof, for receiving a Prisoner, or to delay receiving them, or to take for the keeping any Prisoner more than four-pence, on paine of ransom and fine ; and of the poor let nothing be taken, nor let any Prisoner be confined longer than he ought for not paying such Fee.

[f. 19. a.]

¶ 1 Inf. 162. a.
253. b.
2 Inf. 482.
Brac. 16. b. f. 13.
145. b. f. 1.
162. f. 2.
Fle. 184. f. 1.

XIII. And we will that all Contracts whatsoever, made in Prison by Prisoners not taken or detained for Felony, be valid, if they did not enter into those Contracts, by the influence of such Distress || as includes fear of Death, or Torture of Body ; for in such Case our Pleasure is, that they reclaim their Deed as soon as they are at Liberty, and signify the Fear they were under to the nearest Neighbours and to the Coroner ; and if they do not reclaim those Deeds, by (11) complaining thereof within a Year and a Day, then such Deeds shall be binding.

XIV. We forbid all those who claim the Wardenship of any Prison in Fee, from keeping a Prover, who has confessed himself to be a Felon and appealed others of his

(11) COMPLAINING THEREOF. In the Time of Ed. 1. There lay a Writ of an Alienation made by Durefs, while he was in Prison, for the Party himself that made the Alienation. 2 Inst. 482.

(11)

his Felony, beyond a Day and a Night, but let him speedily send him to some Prison, which is in our own Hands, on Peril of forfeiting the Custody thereof ; and let no other keep a Person taken for Felony in Prison beyond a Day and a Night, without sending him with all Dispatch to our Prison on Pain of Ransom.

XV. And with respect to this article, let it be inquired, who has imprisoned another or (12) detained him wrongfully in Custody or in Prison, maliciously and unjustly, but under Colour of Judgment ; and let such as shall be convicted thereof, be punished by Imprisonment and by Ransom, which shall be greater or less, in Proportion to the Offence.

C H A P.

(12) DETAINED HIM WRONGFULLY. The Abbot of Crowland had a Gaol, wherein divers Men were imprisoned ; and because he detained some that were acquitted of Felony, after their Fees paid ; the King seized the Gaol for ever. 2 *Inst.* 43.

[f. 19. b.]

C H A P. XII.

Of * O U T L A W S. (1)

* Brac. 125.
 c. 11. 12, 13.
 Fle. 40. c. 27,
 28.
 St. P. C. 45.
 184. c. 22.
 2 Haw. P. C.
 c. 48. f. 21.
 2 Hal. P. C.
 p. 194.

Sect. I. **I**N the next Place, let inquiry be made of Felons outlawed, and of such as abjured the Realm for Felony, and have since returned without our Leave; and of those who knowingly receive them.

II. And because it is necessary every one should know the Danger of receiving such Persons, our Will is, that all, who are of the Age of (2) fourteen Years or up-

(1) OF OUTLAWS. Lord Coke, says *Bracton* and our Author, treat excellently on this Subject. 3 *Inst.* 213.

(2) FOURTEEN YEARS. The Editor of the first Book of *Fleta* remarks, how greatly the antient Authors differ about the Age of taking the Oath of Allegiance, some making it twelve, others fifteen, and *Britton* alone fourteen * Years. Note on *Fleta*. c. 27. f. 4. p. 61.

* *Mir.* p. 13. & 283. says 14 Years.

C. J. *Hale* fixes twelve Years of Age for the taking the Oath of Allegiance, and says, That the Oath mentioned here by *Britton*, includes more than the Oath of Allegiance, and used to be taken at a different Age, from the other Oath; but that this has been long disused. *Hal. P. C.* p. 64.

Lord Coke says, That when old Books mention sometimes fourteen Years, it is but Misprinted; for the Time of taking the Oath of Allegiance at the Tourn or Leet, is twelve Years, and so provided by the Stat. *Marl.* 2 *Inst.* 121, 147.

Mr.

upwards, take an Oath † to us, that they will neither be Felons, nor assenting to Felons; and let every one be in some Decenna, and pledged by others of the same Decenna, (4) except the religious, || Clerks, Knights, and their eldest Sons, and Women; let the Condition of the Pledge be this, that if those they have pledged, are not amesnable to Justice in our Court when required, both the Decenners and Decenna shall be in our Mercy; with regard to Clerks, Knights, and Women, our Pleasure is that the Head of every Family (5) be answerable for all his chief Domesticks, and that they answer for those under them.

† 2 Inf. 73. 121. 147.
3 Inf. 165.
Brac. 124. b. f. 1.
Fle. 40. f. 4.
Mir. c. 1. f. 3.
p. 13.—c. 1.
f. 17. c. 5. f. 6.
p. 283.
§ 2 In. 73.
|| 2 Inf. 4. 121.
Brac. 124. f. 1.
Fle. 40. f. 2, 3.
62. f. 10.
Mir. c. 1. f. 17.

III. As to Hosts, let every one answer for such Guests as he harboured more than two Nights together, so that the first Night, * the Stranger be
F 4 deemed

ff Brac. 124. f. 2.
Fle. 40. f. 4.

Mr. *Emlyn* in his Notes upon Lord Chief Justice *Hale*, seems also to think *Britton* is misprinted in this Place. Note on *Hale's P. C.* p. 23. 64.

(3) DECENNA. See great Encomiums on this excellent Institution. 2 Inf. 73. Sir *Wm. Temple's Intro.* to the Hist. Eng. Fo. Edi. p. 558.

(4) EXCEPT THE RELIGIOUS. Lord Chief Justice *Hale* says, 'That tho' Men of Religion, Prelates, Earls, Barons, and Women, were excused from attending at the Leet or Tourn to take the Oath of Allegiance when above twelve Years of Age; yet Men of Religion and Noblemen were to take it at other Times, and in other Places. *Hal. P. C.* p. 64.

(5) BE ANSWERABLE. It appears from the following short Record, that the Rights of Friburg and Mainpall were in Use with the English, some five or six Generations ago.

Eyer at *North.* 3 Ed. 3. tit. Coron. 293.

Curio, a Priest is fined, because there had been one of his Family a Murderer. *Seld. Janus*, p. 39.

* 3 Ed. 1. Wef.
1 c. 9.

4 Ed. 1. off Co.

2 In. 172, 173.

3 In. 116. 117.

Glan. l. 14. c. 3.

Brac. 121. f. 4.

125. f. 2.

Fle. 35. f. 3.

&c.—40. f. 1.

Mir. c. 1. f. 3.

p. 15.

[f. 20. a.]

2 Haw. P. C.

p. 75.

2 Hal. P. C.

p. 98.

† 13 Ed. 1. c. 1.

5 Ed. 3. c. 14.

28 Ed. c. 11.

27 El. c. 13.

8 G. 2. c. 16.

2 Inf. 569.

Mir. c. 2. f. 6.

§ 3 In. 232.

Brac. 125. b. f. 6.

128. c. 13. f. 5.

&c.

Fle. 40. f. 5.—

41. f. 9.

Mir. c. 4. f. 16.

p. 260.

2 Haw. P. c.

c. 9. f. 27. c. 49.

f. 14.

Hal. P. C. p. 362.

deemed an unkouth, the second Night, a Guest, and the third Night, a (6) Hoghenhine.

IV. And for the due maintaining of Peace, our Pleasure is, that when a Felony is committed, every one be ready to * pursue, and arrest the Felons, according to the (7) Statutes of Winchester, † with the Hue and Cry, by Horns and Voices, from Town to Town, untill they are either taken, or have fled to some Place of Sanctuary, or have been pursued as far as the chief Town of the County, or of the Franchise.

V. We Will also, that every one, who flies from § our Peace forfeit his Chattels to us by such Flight, if he be suspected of the Felony, notwithstanding he is afterwards acquitted of the principal Fact.

VI. And if it be Murder or other Felony concerning the Death of a Man ; let such Felony be presented at the next County, by one or more Vills, and by the first (8) Finder, and by the Kindred of the Per-

(6) HOGHENHINE. The proper Word is Agen hine, i. e. his own Servant, or one of his Family. *Fortescue's Preface to the Treatise of Monarchy*, p. 77. *Seld. Janus*, p. 87.

(7) STATUTES OF WINCHESTER. There is but one Statute which goes by this Name relating to Hue and Cry, viz. That of 13 Ed. 1. Stat. 2. See *Mir. c. 2. f. 6.* p. 123.

(8) THE FINDER. See a Record in the Eyer of *Canterbury*, 6 Ed. 2. in *Seld. Janus*, p. 39. and Note on *Brit. fo. 6. a.*

(9)

Person killed, that is to say by one or more of Kin on the Part of the Father, or on the Part of the Mother, according to the Custom of the Country.

VII. And if one or more be appealed of the Death, and others of the Force, and of the (9) Accessory Facts, let the Principals § be first demanded at (10) three County Courts to come and answer to the Felony, and if they do not come at the fourth || County, let them not be permitted to give Bail for their Appearance at the fifth, but be (11) outlawed at the fourth. A Woman however † cannot properly be outlawed, because she is not sworn into any Decenna or to the Law, but she may be waved, which in Point of Punishment is equivalent to an Outlawry.

† Wes. 1. c. 14.
2 In. 182

§ 3 Inf. 138.
Fle. 41. f. 18, 19.
St. P. C. 40. &c.
2 Haw. P. C.
c. 27. f. 128.
c. 29. — Hal. P.
C. p. 612.
|| Brac. 125. b.
f. 6.
Fle. 40. f. 5.
Mir. c. 4. f. 4.
† 1 In. 122. b.
128. a.
Brac. 125. f. 5.
Fle. 41. f. 12, 13.

VIII.

(9) ACCESSORY FACTS. The Passage in Britton stands as follows, *Et ascuns de la force et des faitz Accessories* — and in Fleta, p. 41. f. 18. thus, *Appellatis de forcia et de aliis Accidentalibus*; therefore as Fleta in this Place seems to have followed Britton, it may be doubted whether the Word *faitz*, should not be *autz*, and then our Author and Fleta will agree, and the whole will have a more easy Rendition, and run thus; And if one or more be appealed of the Death, and others of the Force, and of other accidental Circumstances, let the Principal be first demanded. Fleta, p. 41. f. 18.

(10) THREE COUNTY COURTS, i. e. in Fact four County Courts, but called only three as the first was only a bare Calling of the Offender.

(11) OUTLAWED AT THE FOURTH. So says Fle. p. 40. f. 5. But compare Bracton, who is more full and clear upon this Subject. Brac. 125. b. f. 6.

* 1 In. 128.
 3 In. 212.
 Gl. p. 15.
 Brac. 128. b. f. 1.
 &c.
 [f. 20. b.]
 Fle. 42. c. 28.
 f. 3, 4. &c.
 Mir. c. 4. f. 16.
 p. 260.
 † Brac. 128. b.
 f. 1, 2.
 St. P. C. 96. b.
 41. b.
 2 Haw, P. c.
 p. 33. 319.
 Hal. P. C. p. 622.
 § 1 Inf. 128. b.
 Brac. 125. b. f. 5.
 128. c. 13. f. 3.
 4. 134. f. 18.
 Fle. 41. f. 13.
 Mir. c. 1. f. 13.
 c. 2. f. 6.—c. 4.
 f. 4. p. 237.

VIII. As to the Punishment of Outlaws
 in their Life-time for their Felony ; let their
 Judgment be this,* that since they will not be
 amesnable to the Law ; let them be forejudged
 from all Law, and put out of our Peace,
 and let them be answerable to all, and none
 to them ; and let them, as well as all who
 (12) knowingly † receive them, or (13) bear
 them Company after their being outlawed, be
 looked on as Felons, and let him who shall
 (14) kill § them be acquitted of their Death,
 except in Cases, where they would have sur-
 rendered

(12) KNOWINGLY RECEIVE THEM. Some Books
 have carried this so far as to make the receiving a Per-
 son outlawed to be Felony, if the Receipt was in the
 same County in which the Party was outlawed, because
 being Matter of Record in the County Court, the Party
 is presumed to know it ; but *Ld. C. J. Hale* and other
 great Authorities, think with *Britton*, that Notice is ne-
 cessary, for Presumption shall not make men crimi-
 nal, where the Punishment is capital. *Hal. P. C.*
p. 622.

(13) BEAR THEM COMPANY. Herewith agreeth
Bracton, and so was the Law in the Time of *K. John*, as
 will appear from the following mutilated Case, never
 before published.

Affizes and Pleas of the Crown taken at *Litchfield* the
 Day of *St. Matthew* the Apostle, &c. 5 *K. John*
 Roll 2.

Ralph Faber of *Littlehay*, fled with other Malefactors
 A. whom B. had received into his House, &c. was
 outlawed, and because B made himself a Companion of
 the Outlaw, let him. ——— *Mss. Lat. in Lincoln's Inn.*
Libr.

(14) KILL THEM, BE ACQUITTED. The following
 very antient Record never before printed, furnishes us
 with an Example of this kind.

rendered themselves, or in Cases where they might have been (15) otherwise taken; neither in Appeals, § let them be heard against any Man; and if they are taken, and found to be outlawed by Record of the Roll of the Coroner, let them be hanged, and their Chattles be forfeited to us, and their Heirs ever after disinherited || of all kind of Inheritance.

§ Brac. 129. f. 5.
Fle. 42. f. 3.

|| Brac. 130. f. 19.
20.

Fle. 43. f. 4.

Mir. p. 238.

2 Haw. P. C.

p. 456.

Hal. P. C. p. 354.

St. P. C. 182. b.

195. b.

C H A P.

Affizes and Pleas of the Crown taken at *Northampton* in eight Days of the Nativity of the blessed *Mary* in the fourth of K. *John*, Roll 2, on the Back.

Hugh the Son of *Walter* was outlawed for the Murder of *Roger Rumband*, he obtained the King's Writ to return, and was afterwards outlawed on the Appeal of *Geoffry* Son of *Turstan* for the same Murder, and not appearing at three County Courts, it was ordered, That inasmuch as *Hugh* would not be amersnable to the King's Peace (*gereret lupinum Caput*) he should be in no better Condition than a Wolfe. || *Mss. Lin. Inn. lib.*

|| i. e. He might like that wild Beast be killed if he resisted his Captors, otherwise he was only to be hunted from Place to Place till he could be taken. 1 *Umfr. Lex. Cor.* p. 299.

But in the Beginning of the Reign of K. *Edward* the 3d. it was resolved by the Judges for avoiding of Inhumanity and effusion of Christian Blood, That it should not be lawful for any Man, but the Sheriff only (having lawful Warrant therefore) to put to Death any Man outlawed, though it were for Felony, and if he did, he should undergo such Punishment and Pains of Death as if he had killed any other Man, and so from thenceforth the law continued until this Day. 1 *Inf.* 128. b.

(15) OTHERWAYS TAKEN. For in such Cases whoever killed an Outlaw, was answerable for his Death as much as any others. *Brac.* 128. b. f. 4.

C H A P. XIII.

†Brac. 131. c. 14.
f. 1.
Fle. 44. f. 14.

Of † Inlawry, or being restored to the Law.

*Brac. 131. b.
f. 2.
Fle. 44. f. 14.

§Brac. 127. f. 7.
—132. b. f. 12.
Fle. 42. f. 2.—
44. f. 14.

[f. 21. a.]

SECT. I. **I**NLAWRY, in many Cases ought to be granted of right, and in others it may be of * Favour, and where of Favour, it is proper the Outlaws procure our Charter, (1) containing a Pardon of the Outlawry before pronounced against them, and always carry it about them, (2) for fear they should not be protected by us, when they shall have occasion; but if they have been regularly § outlawed, and for Crimes which deserved it, then such Pardon will avail them nothing towards recovering any of the Lands or Chattles which were theirs, before the Outlawry pronounced against them, (3) nor en-

(1) OUR CHARTER. See the Form of it. *Brac.* 131. b. f. 2.

(2) FOR FEAR THEY SHOULD NOT BE PROTECTED BY US. *Fleta* says, lest they should be killed by those who were Ignorant of their having obtained the King's Pardon. *Fle.* 44. f. 14.

(3) NOR ENTITLE THEM TO DEMAND ANY INHERITANCE OR DEBTS. In fine, as *Bracton* says, The Pardon restored the Outlaw only to the King's Peace, so that he might go and return freely, and be capable of making any fresh Contract, but did not restore him to any

entitle them to demand any Inheritance, or Debts, or give them any Manner of Remedy for any Injury they suffered before the Outlawry.

II. Inlawry * ought of Right to be granted in these Cases, viz. Where a Man has been outlawed (4) before the 4th County, or without Suit, or without Command of the Justices in Eyre, after their Eyre ended, or without our Writ, or where there was not a regular Succession (5) of County Courts, or if the Outlawry was not (6) in the County Court, or not in the Presence of the Coroner, or if the outlawed, at the Time of pronouncing the Outlawry, was within the Age of (7) fourteen Years, or non compos mentis, or deaf, or dumb, or an Ideot, or out of our § Realm, or detained in || Prison, or if the Cause of

*Brac. 127. f. 7.
8. 133 f. 13.
Fle. 42. c. 28.
f. 1. 45. f. 15.
Mir. c. 3. f. 23.

§ 1 In. 260. b.
|| 1 In. 259. b.

any of his Rights or Possessions, for these being once legally forfeited, could not be given him again, without Prejudice to those to whom they were forfeited. *Brac.* 132. b. f. 12.

(4) BEFORE THE FOURTH COUNTY. i. e. As we conjecture, before the fifth, it not being usual to reckon the first County for one.

(5) SUCCESSION OF COUNTY COURTS, i. e. If the Suit was discontinued after it was commenced, by not proclaiming him at five County Courts successively. *Brac.* 127, f. 8.

(6) NOT IN THE COUNTY. *Bracton* adds, except at *London*, in the Hustings. *Brac.* 127. f. 8.

(7) FOURTEEN YEARS. As *Britton*, p. 19. b. has said fourteen Years is the Age for taking the Oath of Allegiance, by which one becomes under, or subject to the Law, so here again he says, No one can be outlawed, or put out of the Law, under that age, in which he differs from all the other antient Authors, *Brac.* 127. b. f. 8. *Fle.* p. 42. f. 1. *Mir.* c. 3. f. 23. p. 206. See p. 70. Note 2.

|| 3 In. 213

of the Outlawry be found || nul, (8) as if the Man who was supposed to have been killed is still alive, or if the Outlawry was pronounced in any other County than where the Felony was committed, or if the Outlaw was then in the Wars, or in our Service, or in garrisoning a Castle, or if there was no Colour of Felony; for in these and other such-like Cases, our Will is, that if the Outlaws return and render themselves to our Prison, and acquit themselves of the principal Fact, that then the Justices certify us thereof.

|| Brac. 127. f. 7.
Fle. 42. f. 2.

[f. 21. b.]

|| Brac. 132. b.
f. 11.
Fle. 44. f. 14.

III. And we will immediately of Right by our ‡ Writs command the Sheriff of that County and the Counties adjoining, that with respect to such Outlaws, they cause the Peace to be proclaimed in all the Cities and Boroughs, and in Fairs and Markets within their said Counties, and that Ground of the Outlawry is found to be false, (9) and that they cause the Outlaws to be restored || to their Lands, and to their Rents

(9) FOUND TO BE FALSE. In this Case the Party outlawed was not put to procure a Pardon, nor sue out a Writ of Peace, because to Pardon a Person of that which he was never guilty, would be absurd. *Brac. 127. f. 7.*

If an Attainder, or Outlawry be void, the Party may be either arraigned upon the former Indictment, or Appeal, or newly indicted, &c. if there be Cause: and therefore the Judges are to take due Consideration of the whole Record of the Attainder, or Outlawry, that they may be truly informed of the true State of the Cause, before they award Execution of Death against him upon the Outlawry. 3 In. 213.

Rents, and to their Inheritances, saving to us their Chattels, inasmuch as they gave Occasion of suspicion by their Flight. *

* 1 Umf. lex.
Cor. c. 13. p.
108.

IV. Our Pleasure also is, that those who out of their great Malice contrive to sue any man to an Outlawry in any other County than where the principal Fact was committed, and are convicted thereof, shall be banished our Realm for their Malice.

V. And altho' a Person be legally and deservedly outlawed, yet if it appears that he was dead before the Outlawry pronounced against him, his Heirs shall enjoy his inheritance because his Ancestor never had judgment passed upon him in his Lifetime; and if it be found that such Outlawry was pronounced before the fourth County Court, or that the Proceedings in the County Court, are in any other Instance erroneous, let the County be adjudged in our † Mercy; and if it be found that the Outlawry was pronounced in the Absence of the Coroner, and Neglect be found in the Coroner, let the Coroner be punished by Fine and Imprisonment.

† 2 Umf. lex.
Cor. p. 249. f.
16.

VI. The like in Abjurations made (10) in his Absence, whether he sent his Rolls by his Clerk, or by any other Person not properly impowered.

VII

(10) MADE IN HIS ABSENCE. See Note on Britton, fo. 26. a.

[f. 22. a.]
 1 Brac. 130.
 f. 19. &c.
 Fle. 43. f. 4.

VII. As to Lands and Tenements alienated † by Felons attainted, after Commif-
 fion of their Felonies, we will, that fuch
 Alienations be avoided by the Cheif Lords
 of the Fees, by Virtue of our Writs of Ef-
 cheat.

C H A P. XIV.

Of R A P E.

* 1 Inf. 123. b.
 2 Inf. 180, 181.
 —433, 434.
 3 Inf. 60.
 Gl. 1. 14. c. 6.
 Brac. 104. b. c. 5.
 147. c. 28.
 Fle. 53. c. 33.
 Mir. c. 1. f. 12.
 c. 3. f. 21. c. 4.
 f. 16. p. 261.
 St. P. C. 21. c. 14.
 Haw. P. C. c. 41.
 Hal. P. C.
 p. 626,

† 3 Ed. 1. c. 13.
 13 Ed. 1. c. 34.
 18 Eliz. c. 7.
 6. R. 2. c. 6.

RAPE,* is a Felony committed by a
 Man, by Violence on the Body of
 a Woman, whether ſhe be a Virgin or
 not; and of ſuch Felonies let Inquiry be
 made, and whoever is attainted thereof, ei-
 ther at the Suit of the Woman by Appeal
 of Felony, or at our Suit, he ſhall have
 the ſame Judgment as for the Death of a
 Man, whether the Woman conſented after
 Commiſſion of the Felony or not, as is
 contained in our † Statutes of Weſtmin-
 ſter.

CHAP.

(1) AS FOR THE DEATH OF A MAN. i. e. Judg-
 ment of Death, St. Weſt. 2. c. 34. *Seldon's Notes* on
Hengham. p. 128.

C H A P. XV.

OF L A R C E N I E S.

Sect. I. **L**ET careful Inquiry also be made after (1) Robbers, * Thieves, and such-like Offenders ; concerning whom our Will is, that if those who rob, or steal the Goods of another, amounting (2) to Twelve-pence † or more, are freshly § pursued for the same by the || Owners, or by those out of whose Custody they were stolen, or robbed, and the Goods are

* 1 In. 988.569.
2 In. 189.
3 In. 68. 107.
Glan. l. 14. c. 8.
Brac. 146. c. 26.
150. c. 32. 33.
Fle. l. 1. c. 38,
39.
Mir. c. 1. f. 10.
c. 2. f. 16. c. 3.
f. 19.
St. P. C. 24.
c. 15, &c. c. 20.
Haw. P. C. c. 33.
&c.
Hal. P. C. c. 43.
to 46.
† 2 In. 190.
§ Brac. 150. b.
f. 1.—154. b.
Fle. 54. c. 38.
f. 1.
St. P. C. 29. b.

(1) ROBBERS. Robbers here is taken in the large Sense of the Word. *Seldens's Notes on Hengham*, p. 135.

(2) AMOUNTING TO TWELVE-PENCE, OR MORE. As *Britton* at the End of this Chapter says, If the Larceny exceeds Twelve-pence ; and *Fleta*, if it be Twelve-pence, *et ultra*, it shall be Death ; there is some Reason to doubt whether the Particle *ou* in this Place should not be *et*, which will agree with *Fleta's* Manner of expressing it, and make *Britton* consistent with himself : however, although by some Opinions the Value of Twelve-pence makes Grand Larceny, yet the Law is settled, that it must exceed Twelve-pence to make Grand Larceny. *West. 1. c. 15. Hal. P. C. p. 530. Seld. Notes on Forte's. p. 54.*

Robbery from the Person of another of Goods or Money of any Value whatsoever, and putting him in Fear, is Felony. *Hal. P. C. 532.*

(3)

† 2 Inf. 188.

2 Inf. 188.

St. P. C. 179. b.

[f. 22. b.]

Hal. P. C. p. 349

Haw. P. C. c. 25.

f. 5.

* 3 In. 69.

Brac. 150. c. 32.

f. 2.—154. b.

Fle. 54. c. 38.

f. 1.—62. c. 47.

f. 2.

St. P. C. c. 21.

p. 28.

are (3) found † upon them, they shall be immediately taken and brought to Trial in the Court of the Lord of the Fee, if he has the Franchise of Infangthief, or in the Hundred, or in the County, or other proper Court, and the Coroner shall be forthwith sent for, and the (4) Sakeber * heard in his Presence; and if he in his own Person claims the Goods as stolen from him, or says that he was robbed of them, and brings credible Witnesses to prove it, the Robbers shall be immediately (5) adjudged to Death.

|| Brac. 150. b.

f. 3.

Fle. 55. f. 2. 3.

II. But if they are not taken recently in the Fact, then, altho' the Goods are found upon them, they shall be permitted to answer, and may demand in what Manner the Plaintiffs intend to proceed against them: and if they say as for a Felony, then they shall be either sent to our Goal, or let to Mainprise, until the next County, or until the next Goal Delivery, and there the Plaintiff must commence his Suit in the Form of an Appeal, as shall be explained, when we come to treat of Appeals: and if the Fact * was committed out of the Lord's Juris-

* Brac. 154. b.

Fle. 55. f. 6.

(3) FOUND UPON THEM. That is, taken with the Manner. See the proper Etymology of this Term in the Note on *Fle. c. 37.* Note (d)

(4) SAKEBER. In some Books *Sataburgh*, and so called from his putting in Surety to prosecute the Thief with fresh Suit. *Cowel. Interpret.*

(5) IMMEDIATELY ADJUDGED TO DEATH. i. e. Without being permitted to make any Defence. Note on *Fle. c. 16. f. 7. p. 25.*

Jurisdiction, or if the Lords have not sufficient Suitors to take the Inquest, then such Felons shall be (6) forthwith sent to our County Goal: the Sakeber if he pleases † may bring an Action of Trespass only for his Goods, and then the Judgment shall not be as in Felony, but as in Trespass (7) only; but when the Sakeber has once begun a Prosecution in the Nature of Felony, if he does not proceed to convict the Defendant of such Felony, we will.

† Brac. 150. b. f. 2.
Fle. 54. c. 38. f. 1. 63. f. 5.
[f. 23. a.]

III. Or if the Prisoner has any Warrantor § within our Realm, then he may defend himself by Voucher; and if he Vouches to warrant any Person who gave him the Thing challenged, such a Year, and such a Day, and in such Fair, or in such a Market, in the Presence of several People, or sold it to him, or otherwise delivered it to him, let a Day be given him to produce his Warrantor, if he is not then present; and if he cannot produce him, let him have the * Aid (8) of our Court

† Gl. 1. 10 c. 15.

§ Brac. 151. f. 5.
Fle. 55. f. 4.

* Gl. 1. 10. 16.
Brac. 151. c. 6.
Fle. 55. f. 4.

G 2

to

(6) FORTHWITH. By *Fleta*, the Lord could justify keeping him in his Prison only one Night. *Fle.* p. 52. f. 6.

(7) BUT AS IN TRESPASS ONLY — And in such Case the Suit might be in the Sheriff's Court, and the Conclusion would be, *Contra pacem vice-comitis*. — Note on *Hengham*. p. 140.

(8) AID OF OUR COURT. *Bracton* illustrates this, by giving the Form of the Writ.

The King, to the Sheriff of ——— greeting.
We command you, that you cause to come, C. D. on the — Day of — at — at your County Court.
or

to compel him to appear ; at which Day if he fails having his Warrantor whom he vouched by aid of our Court, let him be obliged to give some other Answer, or be put to his (9) Penance, and the Goods be delivered to the Person who claims them ; and when Persons are vouched to warranty by Aid of our Court, the Sheriff, in whose Bailiwick the Person vouched to Warranty resides, shall be commanded to have his Body, at such a certain Place on such a Day, either to undertake the Warranty, or refuse it ; and if the Sheriff returns that the Person vouched to warranty is not to be found, then let our Writ issue to the same Sheriff, to cause him to be demanded from County to County until he either appears, or is outlawed.

¶ Gl. l. 10. c. 15.
Brac. 151. f. 5.
Fle. 55. f. 5.

IV. And ¶ if the Vouchee comes and enters into the Warranty to defend the Vouchor in the Possession of the Thing challenged, let the Plea of the Principal be suspended, and one commenced against the Vouchee, and if the Vouchee makes good his Warranty, then

(or at the Court of——at——) to answer in the same, County (or in the same Court) A. B. of the Warranty of a —— which he sold to him, as he says ; and whereof he says, A. B. in the same County (or in the same Court) had vouched him the said C. D. to warranty against him the said A. B. Witness, &c. *Brac. 151. f. 6.*

(9) PUT TO HIS PENANCE. If a Man appears to stand obstinately mute on an Arraignment for Petit Larceny, he shall have the like Judgment, &c. as if he had confessed the Indictment. *2 Haw. P. C. c. 30. f. 10.*

then let both Vouchor and Vouchee be acquitted, and the Plaintiffs be adjudged to Prison, for Reasons which shall be given in the Chapter of Appeals : and if Judgement be given against the Vouchee, then let the Thing challenged be adjudged to the Plaintiff, and the Principal be indicted for the Felony at our Suit, upon Presumption of his being a (10) Confederate † of the Vouchee, who is attainted of the Felony.

† Brac. 151. b. f. 7.
Fle. 35. f. 8.

V. And if the Principal * cannot vouch any particular Person, he may say that he bought the Thing challenged such a Year, such a Day, in such a Fair, or in such a Market, in the Presence of a great Number of People, and paid such a (11) Sum to the Bailiffs for it, and if he appeals for the Truth thereof, to the Testimony of the said Bailiffs and others then present, and they testify accordingly, or if he puts himself on the Country, and is acquitted of the Felony, and yet the Prosecutor at the same Time proves, that the Thing challenged belonged to him, and that it was stolen from him out of his Custody, in such

* Gl 1. 10. c. 17.
Brac. 151. f. 6.
Fle. 55. f. 7.

G 3

Case

(10) BEING A CONFEDERATE. *Bracton* and *Fleta* say, That if the Justices suspect that the Vouchee has been hired to enter into the Warranty, the Tryal by Battel is not to go forward, but a Jury is to enquire whether he has been hired for that Purpose or not. *Brac.* 151. b. f. 7. *Fle.* 55. f. 8.

(11) SUCH A SUM. By comparing this Passage with a similar one in *Bracton* and *Fleta*, one would think that the Word TAUNT should be TOULT, and then it would run thus—that he paid the Bailiffs Toll for it. See *Brac.* p. 151. f. 6. *Fle.* p. 55. f. 7. *Mir.* p. 19.

Case he must be answerable to the Owner, and make him Satisfaction, and the Judgment shall be, that the Prosecutor recover the Thing demanded, and that the Person prosecuted shall go quit, but lose what he gave for the Thing in question; and if he can produce no such Witnesses, let him acquit himself by his Country.

VI. And if any one be indicted by Presentment, of Robbery, or of Larceny, or of cutting || of Purses, or of receiving of Felons, or of Inchantment,† as by pretending to charm People, or of Cheating, by selling bad things for Good, as Pewter for Silver,* or Brass for Gold, or are guilty of the like small Offences, our Will is that such be apprehended; or if they cannot be found, let them (12) be demanded, and their Lands and Chattels be seized into our Hands, and if they cannot acquit themselves of the Felony, let them when they come to receive Judgement, whether at our Suit or another's, be condemned to be hanged, or to lose an Ear, or to be * pillored, in proportion to their Crime and (13) Frequency of committing it.

VII.

(12) BE DEMANDED. i. e. In the County Court till they are outlawed; but at this Day, a Person cannot be outlawed for a petit Larceny. *St. P. C.* 24. b.

(13) FREQUENCY OF COMMITTING IT. *Fleta* says, That an Accumulation of small Offences may draw on a capital Punishment; but Serjeant *Hawkins* observes, That though it seems to be the current Opinion of all the old Books, That if one at several Times steals several Par-

cels

[f. 24. a.]
|| *Fle.* 56. f. 11.
—63. f. 7.
Mir. c. 4. f. 21.
p. 270.
† 3 *Inf.* c. 44.
Haw. P. C. c. 3.
* 3 *Inf.* c. 44.
Haw. P. C. c. 71.

9 3 *Inf.* 219.
Br. c. 104. b. c.
5. 6.
Fle. 72. c. 10.
Mir. c. 4. f. 21.
p. 262.

VII. In petty * Larcenies, as for stealing * 3 In. 109.
 Sheaves of Corn in August, or of another Brac. 151. b.
 Man's Pidgeons and Poultry, let the Judg- f. 7.
 ment be this, that if they are not suspected Fle. 56. f. 10, 11.
 to be guilty of any other Crime, and the St. P. C. 25. 6.
 Thing stolen is under the Value of Twelve- Haw. P. C. c.
 pence, they shall be put in the Pillory for 33. f. 21. 26.
 an Hour, and be disabled † from taking † 3 In. 219.
 the Oath of a Juror on any Jury or In-
 quest, or from being a Witness; the same
 likewise, as to all those who have been sen-
 tenced to undergo the Punishment of Tum-
 brell, § or to lose a Limb; and if they are § 3 In. 219.
 Persons of bad Character, or offended out Brac. 104. c. 6.
 of mere Wickedness, and not thro' Want, Fle. 63. f. 8.
 then their Judgment shall be to lose an Ear, Mir. c. 4. f. 17.
 and be rendered infamous for ever, as 21.
 just above mentioned; and if it be the [f. 24. b.]
 second Offence of which they have been
 found guilty, then let it be in the ‡ Discretion † Flet. 56. f. 10.
 of the Justices, either to judge them to Death Mir. c. 4. f. 21.
 or order their other Ear to be cut off; and p. 270.
 if they are convicted a third time, (14)
 whether it be for a great or small Crime,
 or at our Suit or anothers, let them receive
 Sentence of Death.

G 4

VII.

cels of Goods, each under the Value of Twelve-pence, but amounting in the Whole to more from the same Person, and be found Guilty thereof on the same Indictment, he shall have Judgment of Death, as for grand Larceny; yet this Severity is seldom practised. Haw. P. C. c. 34. f. 33.

(14) A THIRD TIME. See the preceding Note.

|| 3 In. 68.

Fle. 56. f. 11.

Mir. c. 4. f. 21.

p. 270.

* 3 Inf. 218.

Mir. c. 4. f. 21.

p. 270.

VIII. And as to (15) Cut-purses, || if it be the first Offence, let them be sentenced to the pillory ; and if they have stolen other Things under the Value of Twelve-pence* they shall lose one of their (16) Ears, and if the Thing exceed Twelve-pence, then Judgment of Death shall be passed upon them.

CHAP.

(15) CUT-PURSES. If any thing above the Value of 12 Pence is taken from the Person of another privily, and without his Knowledge, by the 8 *Eliz.* it is Felony without Benefit of Clergy, 8 *Eliz.* c. 4.

There are now divers other Larcenies, for which consult the several Treatises of the Pleas of the Crown.

(16) LOSE ONE OF THEIR EARS. In and since the Reign of *Ed. 3.* no one has lost any Member for petit Larceny, but were sometimes punished by Imprisonment and sometimes by other Penance, as whipping, &c.
3 *Inf.* 218.

C H A P. XVI.

Of * A B J U R A T I O N S.

Sect. I. **C**ONCERNING those who fly to Places of sanctuary for their Crimes, our Will is, that the Coroner † of the Division go and inquire of them, for what Cime they have taken Sanctuary, and hear their Confessions; and if they will neither confess the Felony, nor come out of Sanctuary to be amesnable to Justice, they shall forfeit their Chattels on Account of their Flight, and the Coroner shall immediately Cause their Lands and their Chattels to be seised into our Hands, and their Chattels to be valued and delivered to the Township, and let the Declaration which they made that they would not come forth to answer to our Peace, be entered in our Rolls, to the Intent that they may not be under the Protection of our Peace, until they have acquitted themselves in our Court of the Crimes wherewith they stand charged; the Coroner however is not (1) obliged to go, unless he pleases, notwithstanding the Fugitive

* Ass Clarendon.
1 Inf. 133. a.
2 Inf. 201. 628.
3 Inf. 115. 216, 217.
Brac. 135. c. 16.
Fle. 45. c. 29.
Mir. c. 1. f. 13.
p. 102. &c. c. 5.
f. 22. &c.
St. P. C. 108.
c. 38, 39, 40.
2 Haw. P. C. c. 9.
f. 44.
2 Hal. H. P. p. 68.
† Brac. 135. c. 16. f. 1.
Fle. 45. f. 2.
Mir. p. 102. 104.

[f. 25. a.]

(1) NOT OBLIGED TO GO. But by the 32 H. 8. c. 12. a Penalty was laid upon the Coroner if he refused to come upon reasonable Request, St. P. C. 121.

tive is desirous of confessing the Felony, and praying the Favour of Abjuration.

II. And if the Felons abide (2) above forty Days, from the Time of the Coroner's first going to them, the whole County shall be charged with their Custody, and they accounted as Felons and Persons out of the Protection of our Peace.

III. And if they Confess the Felony and pray to || abjure our Realm, and implore the Protection of the Church, until they have provided for and settled their Departure, then our Pleasure is, that they have such Protection for forty Days from the Day of the Coroners coming to them; and immediately after the Inrollment of their Confession, let the Constables of the Vills Have the Charge of them, so as they may not in the mean Time escape out of the Place of Sanctuary.

IV. Let the Abjuration be made at the Gate of the Churchyard, in this Manner, hear ‡ this you Coroner and yee other good People, that I, for such a Crime which

I

|| 2 In. 201.
Fle. 45. f. 3.
Mir. p. 102.

‡ 3 Inf. 217.
Brac. 136. f. 2.
Fle. 45. f. 3.
Mir. p. 103.
St. P. C. 119. b.

(2) ABOVE FORTY DAYS. i. e. Without making his Confession and Abjuration; but by *Brac.* 136. f. 3. it should seem as if he had a Right to abide only one Night in the Sanctuary after the Coming of the Coroner, and the Stat. 32 H. 8. c. 12. says, That the Person taking sanctuary shall abide there forty Days, unless the Coroner in the mean Time repair unto him for the taking of his Abjuration, in which Case he shall and may abjure after the Laws and Statutes of this Realm, which Statute favours the Opinion of *Bracton* more than our Author, *St. P. C.* 118, 119.

I feloniously committed, or assented to the Commission of, will depart from the Realm of England, or Land of Ireland, and will never return thereto again (3) unless by Leave of the King of England, or his Heirs, (4) so help me God and the Saints.

V. Then let them immediately chuse some Sea-port, or * passage into Scotland out of the Realm, to which Port or Passage, provided they are not guilty of any fraudulent Delays, they shall be under our Protection; and from that Time, we † forbid them on peril of Life or Member to turn at all out of the high Road, until they have passed thro' the Kingdom or Country unto that Port or Passage which they have chosen, and to no other, with all possible Dispatch, and without (5) Fraud: and when they are arrived there, let them go with a wooden (6) Cross in their Hands, bare-

[f. 25. b.]

* Brac. 135. b.

f. 1.—136. f. 2.

Fle. 45. f. 4.

Mir. p. 103.

St. P. C. 120.

† Brac. 135. b.

f. 1.

Fle. 45. f. 5.

Mir. p. 103.

(3) SO HELP ME GOD. This was the Oath at Common Law, but it was afterwards much enlarged by Stat. St. P. C. 119. b. 120.

(4) EXCEPT BY LEAVE. If he returned without Leave, then under the Word. “abjured,” is implied hanged by the Neck.

Mich. 1 R. 2. Roll 1.

Bedford—he returned and was hanged. 3 *Inf.* 217.

(5) CROSS IN THEIR HANDS. That they might be known to be abjured Persons, and not be hindered in their Journey. This Cross was a Symbol of their Lives being preserved by the Church, and is sometimes called The Banner of holy Church, *Hill. 26 Fd. 3. Roll 10. 3 Inf. 116. 217.*

(6) ANY FRAUD. What Steps the abjured Person was to take when he arrived at the Port he had chosen. See *Fle. p. 45. 1. 5.*

barefooted, ungirded, and bareheaded, in their Coat only; and whilst they are in the direct Road pursuing their Journey we forbid any one under Peril of Life or Limb to kill them, nor shall they, or any other Fugitives be killed, unless they could not be taken in any other Manner.

§ 2 Inf. 629.
Brac. 136. f. 3.
Fle. 45. f. 2.—
46. f. 5.
Mlr. p. 103.
St. P. C. 117. b.
118, b.

VI. And if such Fugitives abide in the Sanctuary, above § forty Days after the Coroners first coming to them, then let them be for ever deprived of the Favour of Abjuration, and deemed as Felons convict, and forfeit their Right to indict, or appeal any others; and we forbid all Laymen on Forfeiture of Life and Limb, and Clerks under Peril of Banishment from our Kingdom during our Pleasure, to give them any (7) Meat or Drink after the said forty Days, or to have any Manner of Communication with them.

VII.

(7) MEAT OR DRINK. When *Britton* wrote, a Layman would have incurred an Excommunication, and the Ordinary of the Place have been guilty of an Irregularity, if the Offender had been taken by Force from the Sanctuary, therefore there was no other Means then, of bringing them to Justice, but by interdicting them the Necessaries of Life; but afterwards by the 21 H. 8. the Offender so refusing might be taken out of the Sanctuary and committed to Prison, and further to be ordered for his Offence after his Merits, without any Restitution to the Sanctuary for the same.

Brac. 136. f. 2. *Fle.* 45. f. 2. 21 H. 8. c. 2.

VII. And we will § and ordain, that [f. 26. a.]
 whenever any one has abjured our Realm § Fle 46. f. 6.
 thro' Fear, and it afterwards comes out that
 he was not guilty of the Felony which he
 confessed, they may safely return, saving
 to every one his Suit ; and in such Case
 their Heirs shall not be disinherited, but
 their Chattels shall notwithstanding be for-
 feited, by Reason of their Flight.

VIII. And our Will is, that all Abjura-
 tions taken by any one, who shall have
 intruded himself into the Office of Coroner,
 without being authorized thereto by us, or
 our Predecessors, or though the Coroner
 was properly authorized, yet if he did not
 attend (8) in proper Person, shall be held
 void, and be retracted and disannuled.

IX.

(8) IN PROPER PERSON. That Abjuration made in
 the Absence of the Coroner was intirely void, the fol-
 lowing very antient and curious Roll published by the
 Editor of the first Book of *Fleta* evidently proves.

Pleas of the Crown at the *Stone-Cross* † in the County
 of *Middlesex*, before Master *Roger de Seyton* and his
 Companions Justices in Eyre in eight Days of
St. Martin in the 2d and 3d Years of the Reign of
K. Ed. 1. Roll 14.

ff. *John le Fevere* murdered *Felicia* his Wife in coming
 from a Tavern at *Dreyton*,|| and threw her into the River
Coln, and immediately betook himself to the Church of
Hermodesworth * and confessed that he had murdered the
 afore-

† It was a Practice in the Saxon Times to erect
 Crosses on great publick Roads, which often gave
 Name to the Hundred, as *Norman - Cross* in *Hun-*
tingdonshire, and *G. It - Cross* in *Norfolk* ; and as these
 Crosses

|| Now *Drayton*. * Now *Harmondsworth* or *Harmf-*
sworth.

† 3 Inf. 217.
St. P. C. 123.

IX. In Abjurations made relating to our
† Deer, or other Trespases, let none be
disinherited of his Lands, or Chattles.

C H A P.

aforesaid *Felicia*, and abjured § the Realm before *Simon dela Dune* under Sheriff of *London*, and because the afore-
John did not abjure the Realm before the Coroner, there-
fore the Abjuration is void, but let him be demanded
and outlawed, and because the aforesaid *Simon* is dead
the Sheriff is commanded to cause the Barons of *London*
who hold the said County in farm of the Lord the King
to come and answer for the aforesaid Offence com-
mitted by the said *Simon* their Deputy. Note on *Fleta*
p. 69. f. 3.

Crosses gave Name to some Hundreds, so likewise
for their known Eminency and Repute, Hundred
Courts were often appointed from the very Time of their
first Establishment to be kept there, and continued so to be
kept for many Ages after the Conquest. Thus the Court
Leet, for Part of the Hundred of *Barlick-Way* in *War-*
wickshire was kept (as Sir *Wm. Dugdale* observes) twice in
the Year at *Bredon-Cross* in the Parish of *Ipsley* near to the
Icenild-Street there, the Title of the Court being, *Bredon-*
Cross, Parcell, Hundredi de Barlick-way; and thus a Jury in
the 4th of *Edw. 2.* found that *Gilbert de Clare* Earl of
Gloucester and Hertford, with *Joanna* his Wife, held a three
Week Court at *Royfes-Cross* in *Royston*.

Dug. Hist. War, p. 487. Cbauncy Hist. Hert. p. 90.
Parkins's Rem. on Dr. Stukeley's Origines Roystonianæ,
p. 6. 7.

§ In the earlier Times, Those who had cleared them-
selves by Judgment of Ordeal were notwithstanding (if
the Crime was of a heinous Nature) obliged to abjure
the Realm, as appears from the Constitutions of *Clarendon*,
and the following antient Roll never before published,

Pleas in the Morrow of the Holy Trin. 15 Year of
K. *John*, Roll 20.

Hereward de Shores Ditch imprisoned for the Murder of
Stephen de Litlington is suspected, but denies it, there-
fore let him clear himself by Water Ordeal. — He
did clear himself and abjured the Realm. See *Seld.*
Epinomis, p. 26. Const. 25. Brac. 136. f. 3.

Since

C H A P. XVII.

Of Treasure-trove, Wrecks, Waifs,
Estrays, &c.

Sect. I. **C**ONCERNING Treasure * found
concealed in the Earth, Wrecks,
Waifes, Sturgeons, Whales, and other
Things found, which of right belong † to
and are detained from us, let careful In-
quiry be made after them, and of the Names
of those who found them, and to whose
Hands they came, and what they are worth;
for our Pleasure is, that Treasure found
hid (1) in the Earth, shall belong to us,
but if found in the Sea, it shall belong to
the § Finder; let those also who found it
buried, forthwith inform the Coroner of
the County or Bailiffs thereof; and it is the
Coroner's Duty to go without Delay and
Inquire whether any of it has been carryed
off

*4 Ed. 1. off Co.
2 Inf. 168.
3 Inf. 132.
5 Co. 108. b.
Gl. 1. 1 c. 2.—
1. 14. c. 2.
Brac. 119. f. 3.
4, 5.
Fle. 61. c. 43.
Mir. c. 1. f. 3.
p. 11. c. 1. f. 13.
p. 100.
St. P. C. 39.
c. 41.
2 Haw. P. C.
c. 9. f. 36.
2 Hal. P. C.
p. 66.
|| St. Præ. Reg.
c. 11.
[f. 26. b.]
5 Co. 108. a.
7 Co. 17. a.
† 2 Inf. 168.
5 Co. 2 p. 108. b.
§ 4 Ed. 1. off Co.
Brac. 122. c. 6.
Mir. c. 1. f. 13.
p. 100.

Since the Stat. of 21 *Ja.* c. 28. f. 7. by which it is
enacted, That no Sanctuary or Privilege of Sanctuary shall
after that Time be admitted or allowed in any Case;
Abjuration has not been in Use. *Haw. P. C.* c. 19.
f. 44. c. 32. f. 6.

(1) IN THE EARTH. If in the Roof or Walls, or other
Part of a Castle, House, Building, Ruines, or elsewhere,
so as the Owner cannot be known, it is Treasure Trove.
3 *Inf.* 132.

(2)

off, and by whom, and to save all that can be found for our Use, and those who carryed it off shall be delivered to Mainprize until the Eyre of the Justices ; and if our Justices find that those who carried it off, did it with a bad Design, they shall be punished by Imprisonment and Fine, but if without any such Design they shall be amerced only.

II. As to Things lost, and afterwards found above Ground, in case the Owner of the Things demand them within the Year and the Day, and can prove them to be his Property, they shall be delivered to him ; so likewise to him who lost the Things, provided he can prove his Loss ; and if the Things are not claimed within the Year and the Day, and the Finder has caused them to be cried and published in the Markets, and Parish Churches, then the Finder may keep them.

* Brac. 120. f. 4.
Fle. 62. c. 47.
f. 1.

III. Waifs * and Estrays, not challenged within the Year and the Day, shall belong to the Lord of the Franchise, if he was legally seized of such Franchise, but if the Lord did not cause the Beast so found to be publickly cried in Manner aforesaid, then the Owner of the Beast is not barred by any Time, from repleving it whenever he pleases, and if the Lord challenges it as his own, the Person demanding it may
either

(2) BE OURS. Of antient Time it did belong to the Finder. 3 Inj. 132.

either bring an Action of Trespass for his Beast, or an Appeal of Larceny, in the Nature of Felony; and if the Lord in either Case be found guilty of a tortious detaining, he shall forfeit his Franchise of Estrays for ever after.

IV. With regard to § Wreck of Sea found, the Ordinance of our Statutes† shall be observed.

V. As to Sturgeons || taken within our Dominions they shall belong to us, allowing the Persons who took them their reasonable Costs and Charges; and as to * Whales caught within our Jurisdiction, let the Head belong to us, and the Tail to our Consort, according to antient Usage.

§ 2 Inf. 166. 167.
Brac. 120. f. 5.
Fle. 61. c. 44.
Mir. c. 1. p. 100.
—c. 3. f. 29.
Doc. and Stu. c. 51.
† 3 Ed. 1. c. 4.
4 Ed. 1. off Cor.
|| Brac. 120. b. f. 5.
* Fle. 61. c. 45.
* Brac. 120. b. f. 5.
Fle. 61. c. 46.

H C H A P.

CHAP. XVIII.

Of the Rights, or * Prerogative of the King.

Sect. I. **W**ITH respect to our Rights, let (1) Inquiry be made what † cathedral, parochial, and conventual Churches, and what religious Houses and Hospitals in that County, are of our Advowson, and which of them ought to be so, but are not, and who has ousted us of them, and by what Means; what § Demesnes also in the same County we hold in our own Hands, and what other demesne Lands other Persons as well as ourselves hold, as well of the antient Demesnes of our Crown, as by Escheat and by Purchase, and who holds such Lands of any others than of ourselves, and what they are severally worth according to their true Value, and as to Demesnes which were formerly in our Possession, but are not now, by what Means they have been alienated, and by whom, and who holds them.

II.

(1) INQUIRY BE MADE. i. e. In the Eyre, for Britton is still handling the Articles of the Eyre.

II. Also of || Fees, and of Advowsons of || Fle. 25. f. 47.
Churches, and of Hundreds, which used to
be held of us in Chief, but are not now;
Inquiry must be made how they have been
alienated, and by whom, and who now
holds them, and from what Time, and
what is their true Value, and annual In-
come.

III. Likewise how much the the Sheriff rents
of us a Year by ‡ Farm, and how many * Hun-
dreds are in our Hands, and what each
Hundred is worth, and how much the Bai-
liffs annually pay to us or any other for
them.

† Brac. 117. a.
Fle. 25. f. 48.
* Brac. 117. a.
Fle. 25. f. 49.

IV. They must inquire also of *Aumones*, and
also of † Services (2) due to us; whether they
have been withheld, and how long, and
by whom.

† Brac. 116. b.
Fle. 25. f. 50.

V. The like with respect to § Suits due § Fle. 25. f. 50.
at our County Courts, our Hundred Courts,
and our Mannor Courts, and at the Turns
of our Sheriffs, and our Views of Frank-
pledge, and at our Mills, whether they
have been fully performed; and if not,
in what Instances they have been neglected,
and from what Time, and by whom: and
so of all Services which of Right are due
to us.

VI. Concerning * Escheats, which ought
to fall to us by the Felony of Felons, [f. 28. a.]

* Brac. 116. b.
Fle. 24. f. 17.
[f. 28. a.]

H 2

or

(2) SERVICES DUE TO US. The Services here pointed
at, being due to the King himself, seem to be those of
grand and petit Serjeanty; and in *Bracton* one of the
Articles of Inquiry is, of Serjeanties, what they are,
who held them, &c. *Brac. 116. b.*

or Death of our Tenants without Heirs, or by any Kind of Reversion; and concerning the (3) Lands of Normans, and of Felons who held of us in † Chief, which have been alienated after the Commission of their Felonies, and ought to be our * Escheats; let it be inquired who holds them, and from what Time, and what their yearly Value in the whole amounts to according to a just Estimate; the like as to Lands and Tenements held by Felons of others, which they alienated after the Commission of their Felony, without compounding with us for the Year || and Waft.

§ Brac. 116. b.
 Fle. 25. f. 37.
 St. Præ. R. c. 12
 —P. C. p. 197.
 † 1 Inf. 74. b.
 Brac. 116.
 * 4 Inf. 194.
 St. P. C. p. 197.

|| St. Præ. Reg.
 c. 16. p. 44. b.
 St. P. C. 197. b.

* 2 Co. 80. b.
 1 Inf. 43. b.
 2 Inf. 65, 66, 67.
 St. Præ. Reg.
 27. b.

VII. Also concerning Earldoms, Baronies, Knights Fees, grand and petit Serjeanties, dismembred (4) without our * Leave; Inquiry must be made how they are held of us, and who hold them, and

(3) LANDS OF NORMANS. *Fleta* adds the Lands of Brittons and other Aliens. *Fleta* 27. f. 37.

Normandy being lost in the Time of K. *John*, all such Lands in this Realm as any *Norman* had either by Descent or Purchase escheated to the King for their Treason in revolting from their natural Leige Lord and Sovereign, and were called *Terra Normannorum*. 7 Co. Caiv. 20. b. St. Præ. c. 12.

(4) WITHOUT OUR LEAVE. After *Britton* wrote, came the Stat. 1 Ed. 3. c. 12. 34 Ed. 3. c. 15. by which, although the King's Tenant in Chief or by Grand Serjeanty had alienated all or any Part without License, there was not any Forfeiture of the same, but a reasonable Fine therefore to be paid; but by the 12 Car. 2. c. 24. all Tenures by Knights Service are abolished. 1 Inf. 43. b.

and of whom, whether of us in Chief, or by meen.

VIII. And whether there be any Thing in arrear to us for any Services or Profits which of Right belongs to us, and that fully, as of Wardships, † Marriages, Homages, Reliefs, and Heriots, where ever we ought to have them of Right (5) or not; by whom they have been withheld from us, and how long, and what is their yearly Value; so of all Children, male and female, and § Widows, whose Marriages belong to us, who have married without our Leave; how many Fees they held, and to whom they married, and how much the yearly Value of their Lands amount to.

† 4 I. 193.
Gl. 1. 7. c. 9, 10.
Brac. 84. c. 36.
37, 38.
Fle. 4. c. 9.

§ Mag. Ch. c. 7.
2 Inf. 18.
Brac. 116. b.
Fle. 10. f. 6 —
24. f. 14, 15.
St. P. R. c. 4.

IX. Let inquiry also be made of all Kind of (6) Purprestures || made upon us with respect either to our Lands or Franchises, and such as shall be presented as Deforceors and Purprestors, by fresh Force since Proclamation of the Eyre, shall be summoned to appear at a certain Day to answer for the Wrong they have done, and the Proceedings against them shall be according to the Nature of our Writs of grand and petty Cape, as in a Plea of Land.

[f. 28. b.]
|| 4 E. 1. c. 4.
1 Inf. 277. b.
2. Inf. 38. 272.
4 Inf. 103.
Gl. 1. 9. c. 11.
&c.
Brac. 116. b.
Fle. 24. f. 18.

H 3

X.

(5) OR NOT. *Ou si non.* This Passage seems very intricate.

X. The Deforceors also in the other Articles aforefaid fhall be summoned, and when any of them appears in Court, and pleads that he (6) found his Ancestor feifed, and can prove it; let the Demand which is without our Writ be dropt, and let thofe who are appointed to profecute our Right, immediately apply for a Writ of Right (which is called a *Precipe quod reddat nobis*,) againft the Deforceors; and if the Writ demands any Thing appendant to our Crown, fuch as our antient Demefnes, no Time need be limited in the Count; and if the Tenants want to put themfelves upon an Inqueft in Form of the grand Affize, they fhall not be admitted thereto without the Conſent of us and our Council, unlefs our Attornies are of Opinion that a Verdict will paſs in our Favour; for we are bound to repeal ‡ fuch Rights of our Crown as have been wrongfully alienated, in which Rights no man ought to aid himſelf by Exception of Non-tenure, though he may by vouching to Warranty, and by taking fuch reasonable Exceptions as amongft Exceptions fhall be hereafter fet forth; and if the Writ is brought on our Behalf concerning Efcheats or Lands purchafed by (7) Aliens, or of other Things which

‡ 3. Inf. 136.

[f. 29. a.]

¶ St. Pre. c. 2.
p. 10.

(6) FOUND HIS ANCESTOR SEIZED. By the 4 *Ed. 1.* c. 4. where the wrong Doer himſelf was in Seizin, the King might reſeize the Lands.

(7) BY ALIENS, or *alienes* here, may mean alienated, but even then the Paſſage ſeems to be attended with ſome Difficulty.

which are not appurtenant to our Crown; in such Case the Count need not go further back than in a Writ of Right, and they may prescribe against us as well as against others; and as to our Escheats deforced † from us, they shall be demanded by Writ of Right.

XI. As to Suits withheld from us, we will proceed by Distress, we claiming this Perogative on Account of the great Delays there are in a Writ of Customs and Services.

XII. With respect to our Fees * held of us by meen, and (8) dismembred since the last Eyre, our Will is, that they shall be taken into our Hands, and the Sheriff be answerable to us for the Issues of them, and they shall not be restored without our Leave.

XIII. And as to Wardships (9) and Marriages detained from us, we Will, that they shall be immediately claimed without waiting for our Writ, and the Penalty provided by our † Statutes shall be in Force against the Deforceors.

XIV. And it be known to all our Subjects, that if any Man dies who held of us by Knight's Fee, or by grand Serjeanty, whether the Lands he held be the antient demefnes Lands of our Crown, or Lands escheated, or purchased, and his Inheritance

H 4

after

(8) DISMEMBRED. See Note, p. 28. a.

(9) WARDSHIPS AND MARRIAGES. The Court of Wards and Liveries is abolished by the Statute 12 Car. 2. c. 24.

† 1 Inf. 277. b.

* 1 Inf. 43. b.
St. Pre. 27. b.

† Mag. Ch. 9. H.
3. c. 3. &c.
20 H. 3. c. 6.
3 Ed 1. c. 22.
13 Ed. 1. c. 34.
Pre. Re. 17. Ed.

[f. 23. b.] after his Death descends among several Daughters, as to one Heir, we will have the Marriage of all the § Daughters as often as they shall marry; and the like with regard to all || Widows whose Lords held of us in chief; and if it be presented that any one, whether Male or Female, whose Marriage belongs to us, has married without our Leave, let all their Lands, and the Lands of their Husbands be immediately seized into our Hands, and the Sheriff shall be answerable to us for the Issues, and they shall not be restored to them without our Leave.

§ St. Pre.
p. 21.
Fle. 24. f. 14.
|| 2 Inf. 18.
St. Pre. c. 4.
Brac. 116. b.
Fle. 24. f. 15.

XV. As to (10) Purprestures, † our Will is, that the Nufances be removed at the Costs of the Purprestors, and the Lands which were taken in shall be (11) seized into our Hands, and the yearly Value thereof inrolled; and afterwards according to the Discretion of the Treasurers and Barons of our * Exchequer, they shall be let at Fee Farm to those who will give most for them.

† 1 Inf. 277. b.
2 Inf. 272.
4 Inf. 103.
Gl. l. 9. c. 11.
&c.
Brac. 116. b.
Fle. 24. — f. 18.

CHAP.

(10) PURPRESTURES. See *Britton* 28. b.

(11) SEIZED INTO OUR HANDS, viz. Upon due Conviction by a Jury. 2 *Inf.* 272.

C H A P. XIX.

O F F R A N C H I S E S.

Sect. I. **L** E T Inquiry also be made what Persons in the County claim to have * Return of our Writs, or the Custody of our Gaol, or that the Justices in Eyre shall come into their Franchises, or to appoint their own Coroners, or to have the Chattels of Felons, or View of Frankpledge, or the Franchises of Infangthief, or Outfangthief, and Gallows, and Fairs, or Markets, or the Priviledge of Pillory, or Tumbrell, or to have Wreck of Sea, or to have Pleas de vetito Namio pleaded in his Court, or to have Lastage, or the Amerciaments of his Tenants, or Traverse, or Toll, or Estray, or † Murage, or Pontage, or Causeage, or a Warren in his Demesne, or other Lands, or to be freed from doing Suit at our County Court, or at the Sheriff's Turns, or at our Views of Franckpledge, or to be quit of (1) Lastage, Murage, or

* Fle. 26. f. 51.

52.

[f. 30. a.]

† 2 Inf. 222.

Flet. 27. f. 83,

84.

(1) FROM LASTAGE. Many Religious Houses, Cities, &c. had these Kind of Exemptions.

Charter of Henry I.

Let all the Men of *London*, and their Effects be quit and free throughout *England*, and the Sea Ports thereof, from Toll and Passage, and Lastage, and from all other Customs.

or Pontage, or who claim any kind of Exemption more than other People.

[f. 30. b.]

II. And let the Presentments upon such Articles be pleaded in this Manner, First, the Claimants shall be ordered to appear on such reasonable Summons as shall be mentioned in the Chapter of Summonses; and then if the Summons be attested and they make Default, the Franchise shall be seized into our Hands, and the Sheriff shall be answerable to us for the Issues, and so remain in our Hands until the Claimants appear and answer; and if those who make such Default have of their own Wrong usurped such Franchises upon us, our Will is, that they shall be distrained on in such Manner as shall be mentioned in the Chapter concerning Attachments in Trespass and Debt; and if they cannot clear themselves in Court from the Personal Wrongs committed against us to our Disinheritance, let it then be awarded, that we (2) recover the Franchise, and that they be disinherited of the Value thereof, or be in our Mercy.

* Brit. 28. b.

III. But if it appears from their Plea, that their Ancestors died * seized, then they shall not be obliged to answer without our Writs, unless they chuse it; but our Attornies shall im-

(2) RECOVER THE FRANCHISE. That is, the Franchise becomes forfeited. 2 Inj. 222.

mediately Cause our Writs of Quo Warranto to be issued against them, and by such Writs they shall first be summoned to come and answer at a Day certain, at which if they make Default the Franchises shall be seized into our Hands as above set forth, and so remain without any other Summons, until our farther Orders, nor shall they even be permitted to replevy such Franchise if they do not forthwith answer our Summons; and if they plead long Possession, or vouch others to warrant who alledge long Tenure thereof, in such Case Judgment shall be respited for the Determination of us and our (3) Council, whether such Answer be a Continuance of the Wrong done to our Crown, or a Title of Right in the Tenants.

CHAP.

(3) OUR COUNCEL. The great Council in Parliament, or before the Chancellor, Treasurer, &c. *1 Inf. 110. a.*

 CHAP. XX.

[f. 31. a.] OF VARIOUS WRONGS.

Sect. I. **I**N the next Place let it be inquired what Persons have built Castles, or Fortletts, or Houses of Stone (1) *kernelled*, and defensible, and let such be summoned to come and answer, and shew their Licence, if they have any, from us, or from our Ancestors for erecting such Fortletts, and if they cannot produce any such Licence, let them be seised into our Hands, or pulled down, according to our Pleasure.

II.

(1) *KERNELLED.* *Hen. 2.* Having demolished and levelled to the Ground the Castles which had in King Stephen's Time been built to the Number of 1115, it was a common Favour granted by our Kings in after Times to give their chief Subjects leave to fortify their Manor Houses with *kernelled* Walls, as the following Licence shews us.

We have given leave to *John de Handlo*, that he may fortify and *kernell* his Mansion House of *Borstall* nigh *Brebull* in the County of *Bucks*, with a Wall of Stone and Lime.

Given the 12 Sep. 1312.

Kennet Par. Antiq. p. 353.

Borstal', the Seat of Sir *John Aubrey*, Baronet.

II. Afterwards, let inquiry be made of (2) Bridges and Causeways, and of common high Ways destroyed, or otherwise in bad repair, who is bound to repair and amend them, and such as are presented shall be attached by Personal Distress to appear, and if it be found on their Appearance in Court, that they hold certain Tenements of us, upon Condition that they repair such Way, let the said Tenements be seized into our Hands, and the Sheriffs be charged to answer us for the Issues, and to cause the Repairs to be done; and where there is no Tenement held of us by the Performing such Services, our Will is, that such Persons as are bound to repair the Ways, and have not discharged their Duty, shall be in our Mercy, and the Sheriff shall be commanded that he cause them to be distrained by their Cattle and by their Chattels, and to detain the Distresses until they have amended the Defects, and this, as often as it shall be needful. [f. 31. b.]

III. Let inquiry also be made concerning those, who since the first Day of the last Eyre have erected any Gallows, Pillory, or Tumbrell, and such Persons as are indicted thereof, shall be compelled by Distress to come

(2) OF BRIDGES AND CAUSEWAYS. See in *Duodale* of Draining and embanking the Fens, several Presentments and Inquisitions relating to this Article of the Eyre.

come and answer; and if on their appearing, they can neither shew sufficient Warrant for what they have done, nor deny that they have done it, let them be awarded to be in our Mercy, and what they have so erected be pulled down.

§ St. Glouc. c. 8.
2 Inf. 311.
Brac. 116. b.
Fle. 28. f. 86.

IV. Let § Inquiry also be made concerning those, who being neither our Justices or our Coroners, have held Pleas of Felony and of notorious Trespasses committed against our Peace.

† 2 Inf. 311.
Brac. 117.
Fle. 28. f. 95.

V. And concerning those who have held Pleas de (3) *vetito namio*, or of Debt exceeding forty Shillings, or of (4) Trespass † exceeding the same Sum without our (5) Writs.

VI. Also concerning those who have the Franchises of View of Frankpledge and of Infangthief,

(3) *VETITO NAMIO*, or *Vee de naam*, i. e. a Distress, forbidden by the Lord to be replevied. 2 Inf. 141.

Diverse Lords of Hundreds and Court Barons have Power to hold this Plea; as for Instance,

Matilda de Mortimer Claims in the Manor of *Mawerdon*, two Law Days, and Infangthief, and Pleas de *Vetito namio*, without the Writ of our Lord the King. *Cowel. Vet. nam.*

(4) OF TRESPASS. If the Trespass be *vi et armis*, where the King upon the Conviction of the Defendant shall have a Fine, there the Sheriff in his County cannot hold Plea of it, for no Court can assess a Fine but a Court of Record—neither shall he hold Plea of Trespass for taking away of Charters concerning Inheritance or Freehold. 2 Inf. 311.

(5) WITHOUT OUR WRITS. By Force of a Justices the Sheriff may hold Plea of a Trespass *vi et armis*. 2 Inf. 312.

thief, and have not the (6) *Juises* which belong to such Franchises; also by what Authority they hold such Franchises of *Juises*.

VII. Let Inquiry also be made concerning those who * hold (7) a Right of Warren in their Lands, other than those which they held in Demesne as of Fee on the Day of granting their Charter of Warranty.

* Brac. 117. b.
Fle. 25. f. 39.
2 Inf. 199.

VIII. Concerning those who have used any other Franchise more † freely or largely than the Tenor of their Charter warranted them to do, by which Abuse they ought to forfeit the Whole.

† Fle. 26. f. 53.

IX.

(6) THE JUISES. I do not find this Word, though it occurs in many Places in *Britton*, taken Notice of in any of our Glossarists; it seems to be formed from the Latin *Judicium*, and in our Author sometimes signifies the Instruments of Punishment, such as Gallows, Pillory, Tumbrel, &c. which the Lord of every Franchise was bound to have; in some Places, the Power of judging; and in others, the Judgment itself. *Brit.* 24. a. 30. a. 31. b. 60. a. 75. b. 76. b. 77. a. 90. b. 134. b. See Yearbook of Mich. 8 Ed. 3. *Dug. Ori. Jur.* 84, 85.

(7) WHO HOLD. This Passage as it stands in the two printed Editions of *Britton* seems obscure; but if instead of *Teynent* we may read *Leyvent*, it will be clearer, and the whole will run thus; Let Inquiry be made concerning those who have erected into a Warren other Lands than those they had in Demesne as of Fee on the Day of granting their Charter for such Warren.

The Article in *Bracton* and *Fleta*, *De hiis qui levaverunt Warreniam sine sufficienti Warranto*, comes the nearest to this of our Author's, and seems to countenance our Conjecture. *Brac.* 117. b. *Fleta* 25. f. 39.

[f. 32. a.]

§ Marl. c. 11.

Wes. 1. c. 8.

2 Inst. 122, 123.

171.

IX. Concerning those who take Fines for leave of (8) Beau & Pleader ; and likewise concerning those who hold Pleas of Matters not within their Jurisdiction.

† Marl. c. 4.

Fle. 28. f. 88.

X. Concerning such Persons as have aggrieved the People by Distresses contrary to the Ordinance of our † Statutes, let the Sheriff distrain those to appear who are accused thereof, and if on their Appearance in Court, they can neither deny the Charge, nor justify what they have done, their Court and their (9) Vouchers shall be seized into our Hands without Replevin.

XI. Concerning those also who have detained Felons or Provers above a Day and a night in any other Place than in
our

(8) BEAU PLEADER. Before the making of the Statute *Marl.* 52 H. 3. c. 11. Justices in Eyre, the Suitors in the Courts of the County, Hundred, and Court Barorn did use to set Fines at their Pleasure upon the Defendant or Plaintiff, Tenant or Demandant, and not upon the Counsel learned for vicious Pleading, because it was in Delay of Justice, and so a Contempt of the Court, and then he had leave to amend it, and make it perfect, which is called *Beau Pleader*. 2 Inst. 122.

The above Statute does not extend to the King's higher Courts of Justice, nor take away Fines certain for Beau Pleader in the inferior Courts. 2 Inst. 123.

(9) VOUCHERS. The Word in the old Edition is *Garenes*, which signifies *Warrens*, and in this of *Wingates*, *Garants*, which we have rendered *Vouchers*, unless the Reader thinks it ought to be *Graunts*, that is the *Grants* or *Charters* of the Lord.

our Goal under the Custody of our own Officers, and who those are who have so detained them; and if any one died in Prison and was buried without View of the Coroner, then let it be inquired who buried him, and of the Cause of his Death; and those who are indicted and convicted of the first Article shall lose the Fees of a Goaler, and if they offend more than once, let them be punished more; and as to the other Article, the Townships where such Bodies were buried shall be in our mercy; and if any Felony was committed, let those be answerable who shall be indicted for it.

XII. Afterwards let Inquiry be made concerning Weares levied in common Waters, and concerning Waters and high-ways stopt or straightened or in other Manner appropriated, and concerning Water-courses turned, and of Walls, * Houses, Marl-Pitts, * 2 Inf. 405. or Ditches, levied near the common Road, [f. 32. b.] to the nuisance of Passers by, and who those are who are guilty of such nuisances, and of High-ways not wide enough; concerning those also who have neglected to watch † according to the Ordinance of our Statutes of (10) Winchester; and concern- † Brac. 117. b. 13 Ed. 1. 2 In. 569. ing Landmarks and Boundaries removed; and

(10) STATUTES OF WINCHESTER. See likewise Art. sup. Chartas, 18 Ed. 1. c. 17. 28 Ed. 3. c. 11. 5 Hen. 4. c. 3. 27 Eliz. c. 13. 22 Geo. 2. 2. 46.

and according to the Presentment of these Articles, let the Abuses be redressed by View of the Presentors at the Cost of the Offenders, and let the Guilty be amerced in proportion to the Damage they have done and the Profit they received therefrom.

|| Brac. 117. a.
Fle. 26. f. 56,

XIII. Concerning those also who have tortiously || disturbed the Judgments of our Court, so that the Executions thereof cannot be had; of those also who have assaulted the Attendants on our Officers, knowing them to be so, and let such be punished by Fine and Imprisonment.

† 1 In. 2, b.—
94. b.
2 In. 74.
St. Mort. 7 Ed. 1.

XIV. Also Concerning Lands and Tenements alienated ‡ in (11) Mortmain, let such Lands and Tenements be seised into our Hands without Replevin, and the purchasers also be in our Mercy and charged with the Issues from one year * after the Purchase, and the Sheriff be answerable to us for such Issues.

* St. 7 Ed. 1.
Sec. 5.

† Brac. 116. b.
Fle. 24. f. 19, 20.

XV. Let inquiry be made of False Weights† and Measures, and let such Order be taken as shall be mentioned in the Chapter of Measures.

XVI. Let Inquiry also be made of Clerks (12)

(11) MORTMAIN. See *Mag. Cha.* c. 36. 7 *Ed.* 1. *St.* 2. 13 *Ed.* 1. c. 32. 15 *R.* 2. c. 5. 9 *Geo.* 2. c. 36.

Neither *Bracton* or *Fleta* make this one of the Articles of the Eyre.

(11)

(12)

(12) who hold pleas between the Laie-
ty concerning other matters than Wills
Marriages or Tythes, § or who have ad-
judged any Layman in Court Christian
to any Pecuniary mulct in any other
Case than in the Points aforesaid, or
who have excommunicated people with-
out just Cause, or wrongfully caused them
to be seised and Imprisoned ; of those also
who have maliciously aggrieved others by
(13) serving them with two Summonses
to appear on the same Day at two different
Places, and let all such be punished by
Fine and Imprisonment.

[f. 33. a.]
§ 2 Inf. 364.
Brac. 402. c. 4.

XVII. Moreover let Inquiry be made con-
cerning those who have taken Theft bote
of (14) Redubbors || of Cloth who do not || 3 Inf. 134
dwell in Boroughs or Cities ; and also con-
cerning Tanners who follow the Busi-
ness both of a Tanner and Butcher ; and

I 2

con-

(12) WHO HOLD PLEAS. This is not found a-
mong the Articles of the Eyre, either in *Bracton* or
Fleta.

(13) BY SERVING. The Words here rendered, *by*
Serving, in *Britton* are *par Bulles*, the Sense of which is
difficult to be made out ; but if we may suppose that
our Author wrote it *par bailes*, i. e. by delivering to, or
serving the Party with two Summonses to appear in
different Courts on one and the same Day, the Offence is
manifest.

(14) THEFT-BOTE OF REDUBBORS OF CLOTH. Re-
dubbors [are in Law, Patchers, Botchers, or Menders of
Apparel, that take Theft-bote of Cloth, i. e. stolen
Cloth, and change it into another Fashion, and are
dwelling out of Boroughs and Cities ; because in those
Days Boroughs and Cities were so well governed, as such
Offences were soon discovered. 3 Inf. 134.

† 3 Inf. 195.
* 2 In. 34. — 543.
Fle. 28. f. 103.
79. c. 17.

† 2 Inf. 228.

§ Brac 117. b.
c. 1.
Fle. 25. f. 44.

* 3 Inf. 65.
Brac. 144. f. 3.
Mir. c. 1. f. 11.
p. 43.
[f. 33. b.]

concerning Butchers who retail Meat; and concerning white (15) Tawers who Blanch the Skins of Beast which have been Stollen that they may not be known again; also of those who sell unwholesome or stollen Meat, or any other kind of Flesh hurtful to the Health of Man; also of † Foretallers and those who * buy up more Meat for our use than they need; and of all others who offend against the Form of our Statutes; also concerning Messengers and others, who go about aggrieving the People by avowing for those who no Ways employ them; of those also who devise † and report false Rumours concerning us; concerning those also who flea and sheer Sheep, and of those who have § coursed in (17) others Warrens without Leave: let Inquiry also be made concerning all * *Hamsokens*, and Blood feloniously shed since the last Eyre: and in every such Presentment, let a speedy Remedy be applied with a Suitable Punishment either of Life or Limb or other Penalty.

XVIII.

(15) WHITE TAWERS. See *Cowell's Interpreter*.

(16) STOLEN. The Word in *Britton* is *emles*; but by being coupled with *sursanes*, one would think the Letters are transposed, and that it ought to be read *mesles*, i. e. *mesley*.

(17) IN OTHERS. I have preferred the Word *autr*. in the Text to *uofre*, the Emendation in *Wingate*, as it agrees with *Alienis* in *Bracton* and *Fleta*.

XVIII. Further, let Inquiry be made concerning those who did not appear † before † *Brac. 117: Fle. 25. f. 33.* us or before our Justices the first Day of the Eyre according to their Summons, and let such be amerced.

XIX. The like concerning those who alienated § their Tenements against the § *Fle. 28. f. 91.* Eyre, that they might not be summoned upon Juries or Inquests.

XX. Let Inquiry also be made whether any (18) Customs varying from the Common Law have been used in the County, and what they are, and let such of them as are found to be repugnant to the Common Law be prohibited, unless they have been confirmed by us or our Predecessors.

13

C H A P.

(18) WHETHER ANY CUSTOMS. This, though a very important Article, is not mentioned in *Bracton* or *Fleta*.

C H A P. XXI.

O F O U R O F F I C E R S.

Sect. I. **L**ET Inquiry be made concerning our || Escheators and under Escheators, and what Lands they have seised into our Hands in such County since the last Eyre; let the true Value also of the severall Lands so seised be severally inquired into, and what Profit they have received from each Parcell, and how much others might have made of it during the Time of such Seisin.

|| 1 Inf. 13. b.
2 Inf. 571.

[f. 34. a.]
† 1 Inf. 53.
2 Inf. 14, and
305. 571.
Brac. 117.
Fle. 26. f. 60.
Mir. c. 1. p. 27.
* 1 Inf. 233.
4 Inf. 289.
† 2 Inf. 199. —
571.
Brac. 117.

II. Also of ‡ wast committed by them in * Parks and in † Vivaries, of Venison, of Fish, and of Rabbits, and of other destruction done by them in Warrens and Woods, and how much the Waste in each Particular amounts to.

§ Fle. 26. f. 61.

III. And where they have seised Tenements or other Places, let inquiry be made what § Chattles were found in such Tenements during any of the Time they remained in their Hands.

IV. Also of all Seizures made by them to our and their own Use, how much they have taken for endowing Widows, or for suffering them to be endowed, or for permitting Heirs being Infants to continue

tinue in Ward with their Mothers ; and also for making insufficient || Extents of || Fle. 26. f. 62. Land, or for certifying our Wardships and our Marriages to be of less Value ‡ than they ‡ ‡ Fle. 26. f. 63. really are, or for concealing any Thing which ought to turn to our Advantage ; or for procureing or suffering * false In- * Fle. 26, f. 64. quests to pass upon the Ages of our Wards, or for doing any other Thing to our Prejudice ; and let such Presentments as shall be made relating thereto be inrolled and transmitted to the Exchequer, and there determined, still reserving the Judgments for great Offences committed by them to our own awarding.

V. In the next place, let Inquiry be made concerning the Fees taken by Coroners, their Clerks, and Attendants, and of the Frauds (1) committed by them, according to what is contained in our Statute of (2) Exeter.

VI. Also of Sheriffs and other Officers, who for Reward, or out of Favour or [f. 34. b.] Affection for any Man, have concealed § § Fle. 28. f. 104 Felonies committed in their Bailiwicks, or suffered Prisoners, whether within Franchises or without, to remain (3) unapprehended

I 4

(1) FRAUDS COMMITTED BY THEM. See *Umf. Lex Cor.* v. 2. c. 18. p. 242.

(2) EXETER. The Statute of *Exeter* here referred to, was made in the 14 *Ed.* 1. therefore *Britton* must have been published after that Time. See *Selden's Dissertation* annexed to *Fleta* p. 461.

(3) TO REMAIN UNAPPREHENDED. i. e. who have been negligent in apprehending Felons, as *Fleta* more clearly expresses it. *Fleta* c. 20. f. 104.

|| 2 Inf. 186.
Brac. 117. b.
c. 1.
Fle. 28. f. 97,
98.

hended, or who have let to Mainprise Prisoners who were not || Replevisable, and have detained others who were Replevisable.

§ Brac. 117.

VII. Likewise how many Prisoners have § escaped out of our Prison, or from the Custody of any others in that County since the last Eyre, and who they are, and out of whose Custody they escaped; what Chattles they had, and what became of them, into whose Hands their Lands are come, what they are worth a Year, and who has received the Profits thereof since (4) their escape, and from what Time; how many Provors also have escaped from thence, and out of whose Custody, and who were consenting to such Prisoner's Escape; and for every Escape out of the the Custody of the Sheriff, let the Sheriff be amerced † one Hundred Shillings, and for the Escape of a Provor, let him be imprisoned during our Pleasure.

† 2 Inf. 28.

VIII. Let Inquiry also be made concerning the Want of Repairs of Goals, what Parts thereof stand in need of them, and who ought to repair them, and through whose default the aforesaid Escapes happened.

VIII.

(4) SINCE THEIR ESCAPE. The Word here translated *since* in *Britton* is *pur*, for or on Account of, but that does not seem to be the Meaning of our Author, for the Point to be enquired after, is, who received the Profits of the Lands of Felons after their Escape, and it will bear this Interpretation, if we may be allowed to suppose it should have been printed *puis* instead of *pur*.

IX. Also Concerning Sheriffs their Clerks and Officers, who have either falsely and wickedly made § Provors appeal the Innocent, or hindred them from appealing the Guilty, and let such as are guilty of this Offence be imprisoned during our Pleasure. § Fle. 29. f. 109

X. Also concerning Sheriffs who have [f. 35. a.] let their Hundreds to Farm to Persons whom they know to be but of little Substance, at too high a Rent, with an intent to oppress the People wrongfully in diverse Manners, and let such be amerced.

XI. Also concerning Sheriffs and Bailiffs who have levied money of the Chattles of Felons, or from the Escapes of Prisoners, or from Amerciaments for Defaults made before Coroners, or Escheators, or other general Inquirors, or for non-prosecution in Appeals of Felony, or from Mainpernors who failed in producing the Persons delivered to them on Writs of (5) *Manas*, or for not pursuing the Hue and Cry raised, or for Treasure, or Wrecks of Sea, Sturgeons or Whales found and elained, which Amerciaments no man ought to levy without our Writ of Green Wax, by Estreats of our Exchequer, and let such Offenders be punished by Fine.

XII.

(5) MANAS. See *Britton* p. 5. a and Note 9. on this Word.

|| Brac. 117.
Fle. 28. f. 94.
† Brac. 117.
Fle. 27. f. 81.

* Brac. 117. b.
c. 1.
Fle. 28. f. 99.
100.
|| Brac. 117. b.
c. 1.
Fle. 28. f. 101.
[f. 35. b.]

† 2 Inf. 133.
Mir. c. 2. f. 26.
p. 157.

XII. Also concerning Sheriffs, who have taken Fines and Amerciaments from Persons in their Bailiwick that they might not be distrained on to take upon them the Order of || Knighthood, in which Case they are Amerciable; or that † maintain Suits or the Parties at Variance, and have procured false Inquests, whereby Justice has been perverted, in which Case they shall be punished by Fines; or that have levied one Amerciament * twice, or of two Persons of the same Name, or have levied more || than was contained in the Estreats of our Exchequer; or if any Sheriffs has procured the Removal of any Coroners, by obtaining our Writs upon false Suggestions, in such Case they are Amerciable; or if any Sheriff thro' Malice has kept any Man in Prison whom he ought to have brought before us or our Justices at our Goal Delivery, let them be punished by Fine and Imprisonment.

XIII. Or whether any Sheriff † through Malice, has taken more Cattle for our Debt, or anothers, than the Amount of the Debt, or whether he has distrained Beasts of the Plow, or Wheathers, or Ewes, or

(6) KNIGHTHOOD. When *Bracton* and *Britton* wrote, every Person who held a Knight's Fee, or had 20l. a Year in Land, was compellable by the King's Writ, to take upon him the Order of Knighthood, but this Perogative of the Crown was abolished by the 16th Car. 1. c. 20. See *Umf. Lex Cor.* v. 1. p. 25.

or Utenfils, or (7) *Mounture*, or Apparel, or Things within Doors, when other fufficient Distreffs might have been found without ; and whether any one has caufed fuch Distreffes to be § driven § Fle. 29. f. 118. out of the Fee, or whether they would not fuffer fuch BeafTs to be fed and fupported by the Bailiff, at the Coft of the Owner, to the Lofs of one Party, and Advantage of the other, or have kept fuch Distreffes impounded above fifteen Days ; || for in || 2 Inf. 600, 657. thefe Cafes they are amerciable.

XIV. Of thofe alfo who have fuffered other Pleas to be pleaded in Court christian befides fuch as relate to Wills, Matrimony, and Subjects merely Spiritual, without taking any Money of the Laity, or fuffered a Layman to (8) take an Oath before the Ordinary.

XV.

(7) MOUNTURE. The Word *Mounture* being very expreffive, and fignifying any BeafT for the Saddle or to ride upon, as a Horfe, Mule, &c. It is retained here.

But perhaps in this Place, it may have Relation to the *Equitatura*, or Horfe and Armour of a Knight, which was as much his Contenement, as the Wain was that of the Bondman, and he being ever ready to do the King and Country Service, thefe were privileged by the antient Law from Executions of *fieri facias* or *levari facias*, altho' they were to levy the King's Debts. *Seld. tit. Hon. c. 5. f. 37. Mag. Cha. c. 14. 2 Inf. 28. Mir. c. 2. f. 26. p. 157.*

(8) TO TAKE AN OATH. By a Prohibition by Authority of Parliament about the Beginning of the Reign of Edward I. the Sheriffs were prohibited from permitting the Laity to take the Oath called the *Juramentum Calumnie*, except in Matrimonial and Testamentary Causes which had been ordained here by a Conftitu-
tion

[f. 36. a.]

XV. Concerning such Persons also as have taken Fines for Redisseifins, or for Surcharge of Pasture, and for Purprestures, and who have annually accepted of Fees, or Robes, or other Bribe for suffering any Wrong to be done to us.

¶ Welf. 2. c. 38.
 & Inf. 446.

XVI. Also concerning Sheriffs or Bailiffs, who have summoned more People upon Juries and Inquests than were necessary, with intent to oppress some of them, and be bribed by others for Leave to stay at Home, or for excusing some from Penalties, and subjecting others thereto ; concerning those also who have put Persons on Juries or Inquests who are sick, || or laid up with the Gout, or maimed, or passed Seventy, or Persons not resident in the County, or Persons who live remote, and supposed to have but little Knowledge of the Truth of the Matter in dispute ; of such also as have constrained under a Penalty Persons holding Land under forty Shillings to serve on Juries out of the County, or under (9)
 twenty

tion of *Otho Legate* a later from Pope Gregory IX. A. D. 1237. in the 21 H. 3. and *Britton* as Lord Coke observes, in this Place speaks of the Substance of this Prohibition.

Prohibitio formata de Statuto Articuli Cleri. Sec. 3d. 2 Inf. 600, 657.

(9) UNDER TWENTY SHILLINGS. From this Passage in *Britton* it appears, that the Stat. of W. 2. c. 38. which required this Qualification in Jurors was only in Confirmation of the Common Law ; but as Property increased, the Qualification was enlarged, for by the 27 Eliz. c. 6. it was raised to Four Pounds, and by 4 & 5 W. & M. c. 24. s. 15. to Ten Pounds, at which it still continues.

twenty Shillings, to be on Inquests and Juries in the same County.

XVII. Let Inquiry be also made concerning Bailiffs who make (10) *Scotales*,* in Order to collect Money of poor People, and of such Bailiffs also as collect Corn in Autumn, and go about begging † Lambs and young (11) Pigs, and by this Means support themselves in their Bailiwick, to the Grievance of the People.

* Brac. 117. b. c. 1. Fle. 28. f. 102.

† Brac. 117. b. c. 1. Fle. 28. f. 103.

XVIII. Further let Inquiry be made concerning Sheriffs who have held their Tourn (12) and Hundredors, and others who have held View of Frankpledge * oftener than twice in a Year ; also concerning Sheriffs who have answered to us less than they they ought for Issues forfeited ; in all which Cases they shall be amerced in double the value of the profit they have made.

[f. 36. b.]

* Fle. 29. f. 106.

XIX. The like of Justices, Sheriffs, Hundredors, and others, who have Courts, and of the Stewards and Bailiffs of the same, who thro' Malice have procured Suits to be stirred

(10) SCOTALES. This was prohibited by the 7th Article of *Charta de Foresta*. — See an Emendation of this Article in *Selden's Epinomis*. p. 38. And of the Origin of this Custom. See *Somner's Gavelkind*, p. 29.

(11) PIGS. In *Wingate's Edition of Britton* it is *purceux*, but certainly it ought to be only one Word i. e. *purceaux porcellos*, as in *Charta de Foresta*, Art. 7.

(12) HUNDREDORS. This Word here signifies those who have the Jurisdiction of Hundreds.

§ Flc. 28. f. 96. stirred § up against them "or any others with an intent to oppress them, or have Wrongfully caused our Writs of right to be brought in their Court, in order to Increase the Business and amerciaments of it; or who have amerced People according to their own assessing, or in any other Manner than by their || Peers, beyond the Degree of their Offence, contrary to the Ordinance of the great Charter.

|| 2 Inf. 29.
Brac. 116. b.

XX. And of all wrongful Seizures made by our Officers, of Traverse, or of ‡ Toll, as for Lestage, Pontage, Murage, or Causeage, in which Case they are amerciable in double the Damage.

† Brac. 117.
Flc. 27. f. 83,
84.

XXI. But as to Justices, no Judgment shall be given against them but in (13) our Presence.

XXII. Also of * Prises made by our (14) Castellans and (15) others, who take upon

* 2 Inf. 31. 34,
35 170. 543.
Brac. 117. a.
Flc. 25. f. 32.
27. f. 78, 79.
c. 17.

(13) BUT IN OUR PRESENCE. *Briteon* in another Place says, None but the Justices who follow us and our Court, or ourselves, or our Counsel, are to presume to amend the false Judgments of our Justices, for this we in a special Manner reserve to our own Jurisdiction. *Brit.* fo. 3. a.

(14) CASTELLANS. Before *Mag. Cha.* these Constables of Castles had the like Authority within their Precincts, as the Sheriff had within his Bailiwick, and they commonly sealed with their Portraiture on Horsback. 2 *Inf.* 31.

(15) AND OTHERS. Notwithstanding the Common Law and *Mag. Cha.* the Insolence of Purveyors under the great Officers of the King's Household grew to that Height, and the grievances and Losses of the Subjects became

upon themselves to seize Victualls, or other Things; let it be inquired by (16) whom such Prises have been taken, and to what Damage, and of what People; and in such Case our Will is, that none be warranted by Length of Seisin to the Damage of the People, but satisfaction shall be made to all, nor let any one presume to take any Manner of Prises for us, unless he can produce our Letters (17) Patent making expresse Mention thereof. [f. 37. a.]

XXIII. Of † Sheriffs also and all other our Officers, Justices, Coroners, and Others, who shall oppress religious and other Persons, by putting them to too great an Expence by often coming with too great a Retinue to lodge with them at their Cost, or by their Servants, Horses and Dogs staying too long with them, or else by borrowing Horses or Carriages, or Money of them, or by begging Timber, Iron, or other Materials for themselves, or some of their Household † West. 1. c. 1. —9. 1 Ed. 2. c. 11. 2 Inf. 161. 162. Fle. 26. f. 68. to 74. § 2 Inf. 34.

became so great, that the Parliament upon the Complaint of the Subjects made an Act in 28 Ed. 1. entitled *Articuli super Chartas* for restraining of the Abuses of the Purveyors and Relief of the Subjects. *Art. sup. Cha.* 28 Ed. 1. c. 2. 2 Inf. 543.

(16) BY WHOM. The Text in the old Edition of Britton being *par*, and in *Fleta per quem*, one would think *pur* is misprinted in *Wingate's* Edition, for *par*, and that the Inquiry to be made was, by whom, and not for whom, such Provision was taken.

(17) OUR LETTERS. By *Art. sup. Chart.* c. 2. they were to be under the Great or Petty Seal, now called the Privy Seal, but by 12 C. 2. c. 24. Purveyance is intirely taken away.

hold or Friends, in which Case let them be fined.

XXIV. Let Inquiry also be made concerning our Serjeants and our Attornies assigned to prosecute and defend our Rights, whether thro' Favour or otherways they have permitted or suffered any great Lord or other of the County to continue in Seisin of any Franchise, or any corporeal Inheritance belonging of Right to us; let such be punished by Fines.

XXV. Concerning those also who have remitted, || or have caused to be put out (18) of the Roll, or have omitted inserting in the Roll, Fines and Amerciaments of Right belonging to us; let such be fined, and from thenceforth removed from the Court, and their Superiors punished at our Will.

|| Mir. c. 1. f. 4.
p. 25.

[f. 37. b.]

† 2 In. 207: 208.

212.

Brac. 117.

Fle. 27. f. 81.

Mir. c. 1. p. 26.

* West. 1. c. 25.
28.

XXVI. Also Concerning our ‡ Ministers, who have maintained any Wrong, or have received (19) any Church, while the Advowson thereof was in Litigation in our Court, and let such be punished according to the Statute; * or who have maintained any other

(18) PUT OUT OF THE ROLL. J. C. *Ingham* in the Reign of *Ed. 1.* was fined 800 Marks for erasing a Record, tho' in Favour of a poor Man. 4 *Inj.* 255. See p. 9. Note 25.

(19) RECEIVED ANY CHURCH. i. e. as the Statute *W. 1. c. 28.* more clearly expresses it, Received the Presentment of any Church, and the Mischief Lord *Coke* tells us, before this Act was, that depending a Suit for a Church in the King's Court, the one Party or the other would present the Chaplain of the King, or of some of the Judges, the more to countenance the one Party, and discourage the other. 2 *Inj.* 212.

other Manner, and whether they have disturbed any Man's Right in any Point, and of the Fees which they take, and of whom, secretly or openly.

XXVII. Concerning also the (20) Clerks of our Court of Chancery, and of one Bench and of the Other, and of the Exchequer, who take more than a Penny for Writing a single Writ; and of Chirographers who take more than four Shillings for the (21) Chirograffe of a Fine; and concerning Cryers (22) whether any of them take more than is appointed by our Statute,† and let such Offenders be fined, and expelled the Court, and if their Superiors knew of their Extortion, and did not endeavour to amend it, let them be punished at our Will §.

† West. 2. c. 44.

§ 2 Inf. 218.
Fle. 27. f. 82.

XXVIII. Let Inquiry also be made concerning the Clerks of Justices in Eyre, whether they take more than two Shillings for delivering the Articles according to the Ordinance of

(20) THE CLERKS OF OUR COURT OF CHANCERY, AND OF ONE BENCH AND OF THE OTHER, AND OF THE EXCHEQUER. It may be concluded with more Certainty from this Passage of our Author than from any other of the Antients, that the Division of the four Great Courts, viz. of the Chancery, King's Bench, Common Pleas, and Exchequer, was at this Time thoroughly established.

(21) CHIROGRAFFE. At this Day the Chirographer takes only four Shillings, if there be but a single Warranty.

(22) CRYERS. These seem to be the same Officers as in the *West. 2.* are called Porters bearing Verge before Justices of the Bench, in the Circuit. *West. 2.*

§. 44.

[Wes. 1. c. 27]

[f. 38. a.]

of our Statutes, || or whether they have been Guilty of any other Outrage prohibited by our Statutes, or whether any Inrollment has been delayed, or any Manner of Damage or Grievance done to any one, for we do not allow the Clerks of our Justices, be the Justices who they will, to Commit any such Damage, and let them be punished and forejudged the Court.

XXIX. Let it be also inquired what Confederacies there are between the Jurors and any of our Officers, or between one Neighbour and another, to the hindrance of Justice; and what Persons of the County procure themselves to be put upon Inquests and Juries, and who those are who it is suspected will * perjure themselves for Hire or thro' Fear of any one; such Persons shall be fined at our Pleasure, and be ever after incapable of giving Testimony.

* 2 Inf. 237.

3 Inf. 163.

† Brac. 116. b.

Fle. 24. f. 21.

22.

§ Mag. Ch. c. 25.

2 Inf. 41.

XXX. Let it also be inquired of † Cloth made out of the Realm, and afterwards brought here, and sold in such County, not being of the Assize, § required by the Great Charter, what Quantity of such Cloth has been sold since the last Eyre, and by whom, and what was the Value of the Cloth so sold by each Merchant seperately, and who was appointed by us to seise such Cloth into our Hands, and let this Article be determined in our § Exchequer.

§ 2 Inf. 551.

XXXI.

XXXI. Let Inquiry also be made of Wines* * Brac. 116. b.
 sold in Tons which did not contain (23) two Fle. 24. f. 23.
 hundred and forty Gallons, and who those
 are who thus sold them by wholesale; and
 also of the (24) Prisage of Wines, how
 many Tons have been taken to our Use
 since the last Eyre, and by whose Hands,
 and whether those Wines were sold to any
 other than to ourselves without our Orders,
 and let this Article also be determined at [f. 38. b.]
 our Exchequer.

XXXII. In like Manner let Inquiry
 be made concerning all Sorts of Fish, and
 of every Kind of Spicery, of Wax, Linnen,
 Canvas, Cloth, of (25) Averdupois, and
 of all Manner of Prizes which have been
 taken to our Use since the last Eyre, and
 of the Value of each Prize. † † 4 Inf. 103.

K 2

XXXIII.

(23) TWO HUNDRED AND FORTY GALLONS. It
 seems that when *Britton* wrote, a Ton of Wine need not
 contain above Two Hundred and forty Gallons, but this
 Matter was complained of in Parliament, and by the Stat.
 2 Hen. 6. c. 11. and 5 Anne c. 27. a Ton of Wine must
 contain Two Hundred and fifty two Gallons.

(24) PRISAGE OF WINES. Of the ancient Customs
 payable for Wines called Prisage and Butlerage, see Sir
John Davis on Customs, p. 50.

(25) AVERDUPUIS. i. e. Several foreign Commodities
 which went under that Name; Sir *John Davis*, p. 57. —
 or such Merchandize as are weighed by this Weight.
Corwel.

(26)

XXXIII. Let Inquiry also be made concerning (26) our Customs of Leather and Wool, who have collected them, and how many Sacks of Wool the Collectors have permitted to pass free without paying Custom, and how much the Custom belonging to us on each Commodity annually amounts to, and let these Articles likewise be determined at our Exchequer according to the Discretion of our Barons.

C H A P.

(26) OUR CUSTOMS. The antient Duties payable for Merchandizes were but of two kinds, and known by two Names, Customs and Prizes; Customs were paid for Wool, Woolfells, and Leather, our homebred and native Commodities exported, and Prizes were taken out of foreign Commodities imported. *Sir John Davis, p. 41.*

C H A P. XXII.

Of § A P P E A L S.

§ 1 Inf. 123. b.
287. b.
2 Inf. 68. 180.
247.
3 Inf. 131.
St. P. C. p. 58. b.
2 Haw. P. C.
c. 23.

Sect. I. **H**AVING in Part handled the Articles provided for our Eyres by which Evildoers are to be punished, and Criminals convicted at our Suit; we will now set forth how the like Offences are to be punished at the Suit of others; and first of Appeals.

§ 1 Inf. 287. b.
St. P. C. 58.
c. 6.

II. An Appeal, * is an Accusation brought by one Person against another in a set Form of Words with Intent to attain him of Felony; but every || one may not be an Appellant, for neither an || outlawed Person, nor one who has * abjured our Realm, or been sentenced to Death in our Court, nor an Approvor who has failed of his Proof, nor (1) an Infant within the Age of fourteen Years, nor a Madman, or Ideot, or one Deaf or Dumb, or a † Leper expelled common Society, nor § one within Holy Orders, are to be admitted in Appeals, yet they may (2) accuse || such as

|| 1 Inf. 128.
Brac. 119.
Fle. 31. c. 21.
f. 6.
[f. 39. a.]
Mir. c. 2. f. 7.
St P. C. p. 60.
2 Haw. P. C.
c. 23. f. 32.
* 1 Inf. 128.

† 1 Inf. 135. b.
2 Inf. 54.
3 Inf. 90.
§ 1 Inf. 132.

|| Brac. 118. b.
Fle. 31. c. 21.
f. 1.

K 3

are

(1) NOR AN INFANT. Infancy of the Plaintiff at this Day is no good Objection against his bringing an Appeal. *Haw. P. C.* p. 161.

(2) YET THEY MAY ACCUSE. Our Author here differs from *Bracton* and *Fleta*, for both of them expressly say, That in High Treason the Accuser ought not

are our mortal Enemies, abiding within our Dominions.

III. As to Felonies, there are some which Concern our Suit only, and may be prosecuted by us and not for us, † as against our mortal Enemies, and for counterfeiting our Seal and our Coin; and there are some which Concern the Suit of others and not ourselves, as of Treason * committed against any Lord, by defying his Wife, or his Daughter, or the Nurse of his Children, or for Counterfeiting the Seal of his Lord; there are also some Felonies, † where no other Execution follows at our Suit than such as is in (3) Trespass, to wit, for Mayhems, Wounds, or Imprisonment; and there are others, where Judgment of Death ensues, as well at our Suit as anothers, as in Felonies of the Death of a Man, of || Rape, of § Arson, of Robberies, and such like.

IV.

not to be *Criminosus*, *Brac.* 118, b. *Flota*, c. 21. f. 1. However this Kind of Proceeding by Appeal in the King's ordinary Courts in Cases of Treason hath been long disused, and it seems is wholly taken away by the Statutes of the 5 and 25 *Ed.* 3. and though that Course of Appeal continued still in Parliament, yet by the Statute of 1 *H.* 4. c. 14. all Appeals in Parliament are likewise abolished. *Hall's H. C.* p. 349.

(3) THAN SUCH AS IS IN TRESPASS. i. e. If the Party was only indicted for the Offence; but if an Appeal was brought, and the Appellee was attainted thereof, the Judgment was, that the Appellee should lose the like Member that he deprived the Plaintiff of. See *Britton*, c. 25. f. 1.

IV. First we must treat of Appeals of Felonies which may be brought by us, and not for us ; (4) as of Treason and a compassing imagined against our Person, to put us, or our Consort, or our (5) Father, or our Mother, or our Children to Death ; or to disinherit us of our Dominions, or to draw in our Enemy, altho' such compassing be not * put in (6) Execution.

V. Of which compassing, our Will is, that the Accusation be laid before ourselves, or some other, who without delay † is to cause us to be informed thereof, and any (7) Person shall be admitted to make such Accusation, for no Presentment can be made thereof after any great Length of Time is passed, without the Presentors § in some Degree fixing

K 4

(4) AS OF TREASON AND A COMPASSING. *Britton* in this Chapter gives us a very circumstantial Account of the Form of an Appeal in Treason, the Prisoner's Defence, and his Exceptions to the Appeal, the Manner of waging Battel, the Judgment therein, and the Appellant's Reward ; but see Note the 2d on this Chapter, how all Appeals of Treason are taken away.

(5) OR OUR FATHER, OR OUR MOTHER, OR OUR CHILDREN. Thus *Gourney* and others were attainted of High Treason for murdering *Ed. 2.* Father of *K. Ed. 3.* after he had dismissed himself of his Kingly Office and Duty ; but now the Act of 25 *Ed. 3.* hath restrained High Treason in Case of Death, to the King, his Consort, and to the eldest Son, and Heir of the King. 25 *Ed. 3.* 3 *Inf.* 7.

(6) BE NOT PUT IN EXECUTION. As Compassing is only an Act of the Mind, and cannot of itself be tried without some overt Act to evidence it, such an overt Act by the 25 *Ed. 3.* is requisite to make such Compassing or Imagination High Treason. *Hal. P. C.* p. 108.

(7) ANY PERSON, See Note the second on this Chapter.

(8)

|| B ac. 118. b.
119.

fixing on themselves a Suspicion, either of consenting to it, or concealing it; and when any Person shall offer || to prove this against one or more, let the Person accused be immediatly apprehended and brought before us.

† 3 Inf. 5.
Brac. 119. a.
F. 31. f. 2.
Mir. c. 2. f. 11.

VI. And when they appear in Judgment, let the Accusor make his Appeal † for us by some Serjeant in this Manner, John, who here standeth, appeals Peter, who stands there, of this, that being in such a certain Place on such a certain Day and Year, he there heard this same Peter and another such-a-one by Name, talk of, and contrive such a Death, or such a Treason, by such Plots; and that the said Peter thus acted, and thus uttered (8) himself feloniously as a Felon, and trait-
[f. 40. a.] ously as a Traitor, he the same John is ready to prove by his Body, in any Manner the Court shall award he ought to prove it; however in every Felony, * Battle may be avoided many Ways, therefore it may be necessary to speak with Caution; for if the Appellant be mayhemed, or within the Age of fourteen Years, or (9) above † seventy, or in holy § Orders, or

* Gl. l. 14. c. 1.
p. 114.
Brac. 142. b.
f. 11, 12.
Fle. 50. f. 24,
25.
Mir. c. 3, f. 23.
p. 216. 320.
St. P. C. l. 2.
p. 60.
† 2 Inf. 597.
§ 2 Inf. 598.

(8) UTTERED HIMSELF. Since 25 Ed. 3. Words alone make not Treason, or an Overt Act. Hal. P. C. 115.

(9) SEVENTY. *Bracton* and *Fleta* say above sixty Years, and no Man above that Age was obliged to take upon him the Order of Knighthood, or to serve as a Soldier, therefore probably our Author is misprinted LXX instead of LX. *Brac.* 142. b. f. 12. *Fleta*, c. 34, f. 25. 2 Inf. 597.

or a Woman, or if he can be aided (10) by Record, then he shall say thus; John is ready to prove this, in whatsoever Manner the Court shall award that a Man, who is maimed, or of such an Age, or in such a State, ought to prove it; or he may say, that he Vouches such a Record or such a Record, or such Roll of Record, or War-rant.

VII. And we forbid any Attorneys || to be received either for the Appellant or Appellees, or any Effoin to be allowed on one Side or the other, in any Cases of Death. || 2 Haw. P. C. c. 23. f. 74.

VIII. And our Will is, that if the Appeal be pronounced by the Mouth of a ‡ Serjeant, and be abated on Account of its being wrong set forth, or thro' other Default of the Serjeant, who ought to understand the Science of Pleading, the Serjeant himself shall be amerced one hundred Shillings; and if he was wittingly Guilty of the Offence, and be afterwards convicted thereof, then let him be sent to Prison, and after that suspended * from his Office. † Mir. c. 2. f. 5. 11,

* Wef. 1. c. 29.
2 Inf. 213. &c.
Fle. 87. c. 37.
Mir. c. 2. f. 5.
P. 122.

IX.

(10) CAN BE AIDED BY RECORD. As if the Defendant was indicted for the same Felony before the Appeal commenced, this shall oust the Defendant of his Trial by Battel; for the Law will not oblige a Plaintiff to make good his Accusation in so extraordinary a Manner, when in all Appearance he may prove it in the ordinary Way. *Bracton* 137. f. 3. *Stam. Pl.* p. 179. 2 *Haw. P. C.* c. 45. f. 7.

IX. And as to the Defence of the Appellee, he may defend † himself in this Manner; Peter who is here, defendeth all the Felonies, Treasons, Discourses, or compassings of Mischeifs, against the Person of such-a-one, or such-a-one, (according as he is charged) Word by Word; and in these Appeals, it is more Incumbent § on the Appellant to set forth the Words orderly without any Omission that his Appeal may stand, than for the Defendant in his Defence; and in every Felony we allow the Defendant to defend the Words of the Felony generally, without considering him as having made no Defence, so as that for Default of a Word, or syllable, he be not adjudged as one without Defence, it being sufficient for him to plead, that he is not Guilty of such Felony as the Appellant lays to his Charge, and that he is ready to Defend the same against him by his Body, in such Manner as the Court shall award he ought to do it, or by the Country; nevertheless in Cases of Death, let none be held || attainted for having made an improper Defence, but let him be put to (11) Penance, ‡ until he be prepared to answer better if he made his Defence with his own Mouth; and if by a

† 1 Inf. 294. b.
Fle. 51. f. 33.

‡ 2 Inf. 179.
Fle. 51. f. 33.
2 Haw. P. C. c.
30. f. 12.

(11) PUT TO PENANCE. Some Books hold, that an Appellee of Felony standing mute shall not have Judgment of Penance, but be hanged, yet *Britton's* Opinion seems to be most favoured. 2 *Haw. P. C.* c. 30. f. 12. See p. 35. Note 9.

Serjeant, and the Serjeant avows the Defence, let him be amerced as above ; and if he disavows it, let him be punished by Fine and Imprisonment, and the Prisoner provide himself with a more skilfull Serjeant.

X. The Appellee having sufficiently defended the Substance of the Appeal, he may then aid himself by * Exceptions, and first to the Jurisdiction of the Judge, afterwards to the Person of the Appellant, then to his own, and next to the Appeal itself, and lastly to the Action, as shall be mentioned amongst Exceptions ; and with Respect to the Jurisdiction, he may say, that he is not bound to answer in a Place where the Judge is Party, since in every Judgment † there ought not to be less than three Persons, to wit a Judge, a Plaintiff, and a Defendant ; and in Cases where we are a Party, our Pleasures is, that our Court, to wit, the Earls and Barons in Time of § Parliament, shall be Judges ; the Jurisdiction of the Judge being established, he may aid himself by excepting either to the || Person of the Plaintiff, or his own Person ; and next he may plead in Abatement to the ‡ Appeal, which may be abatable on many Accounts, as for omitting to name in the Appeal the Year, Day or Place, or for naming one Name instead of another, as *Renaud* for *Reyner* ; or for setting forth the Appeal thus, this sheweth unto you *John*, where he ought to say, *John* Appeals ; or for Claiming his

[f. 41. a.]

* 2 Inf. 317.

Brac. 139. b.

f. 3. &c.

Fle. 31. f. 5.

&c. 49. f. 2. &c.

† 1 Inf. 323.

Brac. 399. b. c. 1.

f. 1. 3.

Fle. 427. c. 36.

f. 3. 7.

Mir. 185. c. 3.

f. 3.

§ 1 Inf. 39. a.

|| 1 Inf. 72. a.

Brac. 1. i. c. 2.

f. 7.

† Brac. 141. f.

5.

Fle. 31. f. 6.—

49. f. 9.

Mir. c. 3. f. 10.

11.

Ap-

Appeal by these Words, and this I will prove, instead of saying, and this I offer to prove, or for Variance of his Appeal before the Justices in one * Form, and in the Roll of the Coroner in another.

* 3 Inf. 129.
Brac. 139. b. f.

3, 4.
Fle. 49. f. 5.—
50. f. 15.

[f. 41. b.]
† Brac. 142. b.
f. 11.

Fle. 32. f. 9.
‖ Brac. 137. f. 4.

142.
West. 2. c. 12.

2 Inf. 383.
Fle. 41. f. 15.—
51. f. 32.

† Brac. 141. f.
5. 142. f. 7.
Fle. 51. f. 32.

XI. And if he can by any Exception abate the Appeal, † then our Will is, that he be acquitted as against the Appellant, and the Appellant shall be committed ‖ to Prison, because he failed proving what he bound himself to do, and thus let it be done in all Appeals of Felony; let there be the same Punishment also where the Appellant has withdrawn ‡ himself from his Appeal before Judgment, and let his Pledges to prosecute be in our Mercy, because they have failed of their (12) Pledgery; but in such Case we will that Moderation be used, on Account of their having proffered themselves (13) to fight in Maintenance of our Peace.

XI.

(12) PLEDGERY. This Expression is made Use of in *Dug. Orig.* p. 80.

(13) TO FIGHT. As the Pledges of the Appellant did not engage themselves to fight, this Expression does not seem to be so applicable to the Pledges as to the Appellant, but the following Passage in *Fleta* will elucidate our Author.

“ If the Appellant, says he, be vanquished, he is to
“ be committed to Prison, but his Pledges to prosecute
“ shall not be amerced; and because he fought in Main-
“ tainance of our Peace, his Punishment shall be miti-
“ gated; but if the Appellant withdraw himself, then
“ both he and his Pledges shall be in the King’s
“ Mercy, and he besides committed to Gaol.” *Fleta*,
c. 34. f. 33.

See how the Pledges are discharged. *Dug. Orig.* p. 80.

XII. But though it happens that the Appellees by this Means are acquitted || with Respect to the Plaintiff, (13) it does not therefore follow that they are not Guilty of what is laid to their Charge, wherefore in such Case let it be immediatly demanded of them on our Behalf, how they will acquit themselves of such Charge; and if they say by their Country, then they must be remanded to Prison until a certain Day, and in the mean Time let a Jury be summoned, and according to the Verdict of the Jury on such Charge, let Judgment be given: and if the Defendant cannot abate the Appeal, then let it be in his Election, † whether he will defend himself by his Body, or his Country, and so in all Felonies (14) prosecuted by another, except in special Cases, as Women, Persons mayhemed, and others who neither can or ought to wage Battle.*

XIII. And if he says by his Body, and it be in the Case of Felony at the Prosecution of another, then let the Matter be † examined into before Battle is joined, whether the Cause be Trespafs, or Felony, and if Tref-

|| Brac. 142. b. f. 11. Fle. 41. f. 15, 52. f. 38.

† 2 Inf. 297. Brac. 137. f. 3. Fle. 47. c. 31. f. 2. 50. f. 27.

* 1 Inf. 294. b. 2 Inf. 247. 3 Inf. 157. 221. St. P. C. 176. b. c. 13, 14, 15. &c. [f. 42. a.] 2 Haw. P. C. c. 45. St. P. C. p. 177. Dugd. Or Jur. p. 75. † Brac. 137. f. 3. Fle. 50. f. 12. 28.

(13) IT DOES NOT THEREFORE FOLLOW. In Easter Term, the 33 Ed. 1. an Appeal of Rape was abated for Insufficiency in the Form of it, and the Judgement was, that the Appellee as to the Appeal should go quit for ever.——But he was then arraigned for the Rape at the King's Suit, and was tried and convicted. See the Record in the Note on *Hales's P. C.* p. 634.

(14) PROSECUTION OF ANOTHER. For if the King is the Prosecutor, the Appellee cannot be admitted to defend himself by his Body, it being as *Bracton* expresses it, beneath his Royal Dignity. *Brac.* 142. b. f. 11, 12.

Trespafs, let the Appeal be abated by the Justices *ex Officio*.

XIV. But if Felony, then let the Defendant give Security || to defend himself, and the Appellant Security to prove the Cause; next let a Day be given them to be accoutred (15) with ‡ Arms, and the Defendant in the Mean Time remain (16) in Custody.

|| Brac. 139. f. 4.—141. f. 1.
Fle. 50. f. 28.

‡ Fle. 50. f. 28.
St. P. C. c. 14.

p. 177.

2 Haw. P. C.

c. 45.

21 Vin. p. 31.

XV. And when they appear armed in Court, let the Plaintiff repeat his Appeal Word by Word as he did before, and the Defendant defend himself as before, and afterwards take each other by the Hand, the Defendant swearing first in this Manner; * *Hear this you Man whom I hold by the Hand, who art called John by your Name of Baptism, That I Peter, in such a Year, on such a Day, or in such a Place, did not compass or contrive the Death of the aforesaid N. nor did assent to such Felony as you have surmised,* so

* Brac. 141. b. c. 21, f. 2.
Fle. 50. f. 28.
Mir. c. 3. f. 24.

(15) ACCOUTRED WITH ARMS. It appears from *Dugdale* in the Chapter where he treats of the Tryal by Combat in Cases Criminal, that the Weapons the Parties should have, were a Glayve, long Sword, short Sword, and Dagger; but our Author (who is the only one of the Antients, except the *Mirror*, that mentions the Arms) says, They shall have no other Weapons than a Baston and Target, and this is agreeable to the Laws of the *Lombards*, among whom it is said these particular Fights were first used. *Dug. Orig.* p. 79. See a Treatise on *Honour and Arms*, p. 2.

(16) REMAIN IN CUSTODY. i. e. In the Custody of the Marshal, that no-body may converse with him. 2 *Haw. P. C.* c. 45. f. 3.

so help me God and the Saints ; (17) and afterwards the Appellant shall swear thus ; Hear † this you Man whom I hold by the Hand, who art called P. by your Name of Baptism, that you are perjured, for on such a Day, in such a Year, and in such a place you did contrive such a Treason or such a Death as I have laid to your Charge in the Appeal, so help me God and the Saints.

† Brac. 141. b. f. 2.
Fle. 50. f. 29.
Mir. c. 3. f. 24.

XVI. Then let them both be § brought to a Place (18) appointed for that Purpose, where they must swear thus ; *Hear || this ye Justices, that I John, or I Peter, have neither eat or drank any Thing, nor other Deed done or caused to be done, whereby the Law of God may be abased, and the Law of the Devil exalted ; and thus let the Proceedings be in all Battels in Felony.*

§ Brac. 141. b. f. 13.
Fle. 51. f. 30.
|| 2 Inf. 247.
Brac. 142. f. 4.
Fle. 51. f. 30.
Mir. c. 3. f. 25.
[f. 42. b.]

XVII. And let ‡ Proclamation be immediately made, that no one, except the Combatants, let him see or hear whatever he will, be so daring as to stir, or to talk with a loud Voice, whereby

† Brac. 142. f. 5.
Fle. 51. f. 31.
Mir. c. 3. f. 25.

(17) THE SAINTS. Sometimes the Form ran, The Saints in Paradise, as in 9 Hen. 4. fo. 3. b. pl. 15.

(18) TO A PLACE. The Place appointed for Combats in Civil Actions was usually *Tothil-fields*, and in Trin. Term, the 13th of Eliz. above four Thousand People assembled there to be Spectators of a Combat ; but the Demandant being non-suited for not appearing, the Champions were discharged without fighting.

See the whole Solemnity in *Dyer*, which is the last Case of Battel reported in our Law-Books. *Dyer* 301. Co. En. 182. a. 1 Hen. 6. 7. a.

whereby the Battel may be disturbed, and whosoever disobeyes the Proclamation let him be imprisoned a Year and a Day.

* Braci 142. f. 5.
Fle. 51. f. 31.
Mir. c. 3. f. 21.
† Mir. c. 3. f.
25. p. 218.
2 Haw. P. C.
c. 45.

XVIII. Next, let them * go to Combat, armed without Iron and without Linen Armour, their Heads uncovered, † their Hands naked, and on Foot, with two Bastons (19) tipped with Horn of equal Length, and each of them a Target of four Corners, without any (20) other Armour, whereby either of them may annoy the other; and if either of them have any other Weapon concealed about him, || and therewith annoy or offer to annoy his Adversary, let it be done as shall be mentioned amongst Combats in a Plea of Land.

|| Mir. c. 3. f.
25. p. 219.

† 2 Inf. 247.
3 Inf. 221.
Brac. 142. f. 5.
Fle. 51. f. 32.
Mir. c. 3. f. 25.

XIX. And if the Defendant can ‡ defend himself (21) until the Stars can be seen in the Firmament, and then demands Judgment whether he ought to combat any longer, our Will is, that Judgment be given for the Defendant, and so in all Battles between Champions; and the Appellant of the Felony shall

(19) BASTONS. These Bastons were of Wood an Ell long, and sometimes, as well as the Target, were painted red. 2 Haw. P. C. c. 45. f. 3. 1 Hen. 6. 7. a. Dyer 301.

(20) OTHER ARMOUR. As the Parties fought with Bastons only, Death seldom ensued, but still it did sometimes, as in the Case of the Champion of the Abbot of Bury, who was killed in Mich. the 15th of Ed. 1. 2 Inst. 247.

(21) UNTIL THE STARS CAN BE SEEN. This Sort of Victory and this Privilege is only due unto the Defenders, all other Trials are common and indifferent to both the Fighters. Honour and Arms, p. 27.

shall be committed (22) to * Prison, and if the Defendant will confess the Felony before he is otherwise attainted thereof, and appeal others of consenting to the same, let him be admitted thereto.

* West. 2, c. 12.
2 I. f. 383. 384.
3 Inf. 222.
[f. 43. a.]
Brac. 142. f. 7.
137. f. 4.
Fle. 41 f. 15.—
51, f. 32.
St. P. C. 167.
b. c. 11.
2 Haw. P. C.
c. 23. f. 136.
137. &c.
† 2 Inf. 247.
3 Inf. 131. 2. 2.
Brac. 142. f. 6.
Fle. 51. f. 32.

XXI. And if the Defendant be vanquished, let the † Judgment be this, that he be drawn (23) and hanged, or put to such (24) other painful Death as we shall direct; let all his moveable Goods be forfeited to us, his Heirs be disinherited, and his Children incapable of ever holding Land in our Realm; and let none, unless they have a mind to be suspected themselves of the Felony, presume to intercede for them; and

(22) COMMITTED TO PRISON. As the Appellant fought in Maintenance of the King's Peace, he is not, though vanquished, to forfeit either Life or Limb, but be imprisoned; though according to the Laws of Honour, *Bracton* says, the *lex talionis* ought to be inflicted on him. *Bracton* 137, f. 4.—142. f. 7.

(23) DRAWN. *Gascoign* who was Chief Justice of the King's Bench in the Reign of *Hen. 4.* said, He remembered it to be the Usage, that when a Man had Judgment to be hanged in an Appeal of Death, that the Wife and all the Blood of the Party slain should draw the Defendant to Execution. *Mich. 11 Hen. 4. pl. 24. 3 Inf. 131.*

(24) OTHER PAINFUL DEATH. Compare this with *Bracton* 140. b. c. 5, 6. and 141. a. c. 21. f. 6. *Britton* 45. a. See also the Judgment in Appeal for Offences against Military Honour. *Dug. Or. p. 84.*

(25)

|| 2 Inf. 319.

and let the || Accusor who recently prosecuted such Felony with good Effect, receive from us a notable Reward.

† 3 Inf. 9.
* 3 Inf. 9.

† 1 Inf. 294. b.

XXIII. Appeals may likewise be sued for (25) us in the same manner for counterfeiting our Seal and our Coin, and also for violating our † Confort, or our * Daughters, or our Daughters, (26) or the (27) Nurses of our Children; and in such Cases, let the Judgment be to be drawn and hanged, whether the Felon be † attainted by Indictment at our Suit or by Appeal at the Suit of another Person.

C H A P.

(25) FOR US. All Appeals of Treason are now abolished. See Note—p. 39. a.

(26) OR OUR DAUGHTERS. This seems to be repeated twice, unless we suppose that the first should be *Fils* instead of *Filles*, which might then signify, that an Appeal lay for violating the Wife of the King's eldest Son (which is Treason at this Day) as well as for violating the Wife of the King.

(27) THE NURSES OF OUR CHILDREN. It is one of the Articles against *Roger Mortimer*, Rot. Parl. 4 Ed. 3. n. 1. 28 Ed. 3. n. 8. that he compassed to destroy *les nurritz le Roy*. Note on *Hal. P. C.* p. 78.

C H A P. XXIII.

Of Appeals of Homicide.

Sect. I. **C**ONCERNING Homicides, * our Will is, that those shall prosecute to whom it properly belongs, to wit, the (1) nearest Male Relation of the Blood of him who has been feloniously killed, or one who was of his † Homage (2) or Household, so as their Action be brought within a ‡ Year (3) and a Day.

II. Every Man must commence his Appeal in the County where the Felony (4) was committed, and the Plaintiff at the first County Court must find two Pledges to prosecute, and cause his Appeal to be entered in the Roll of the § Coroner, and so

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* 1 Inf. 287. b.
2 Inf. 68.
3 Inf. 54.
Gl. l. 14 c. 3.
Brac. 125. f. 2.
138. c. 19. f. 2.
Flo. 40. f. 5.—
48. c. 31. f. 6. 7.
Mir. 135. c. 2.
f. 7. and 15.
St. P. C. 59. c. 8.
2 Haw. P. C.
c. 23. f. 39. & c.
† Brac. 125. f. 2.
Flo. c. 27. f. 5.
‡ St. Glo. 6. Ed.
1. c. 9.
1 Inf. 254. b.
2 Inf. 320.
3 Inf. 53.
St. P. C. 62. c.
12.
2 Haw P. C.
c. 23. 33, 34.
§ St. P. C. 63.
c. 13.
2 Haw. P. C.
c. 23. f. 35.

(1) THE NEAREST MALE. Every Appellant must be Heir General to the deceased by the Course of the Common Law. 2 Haw. P. C. 23. f. 40.

(2) HOMAGE. This is antiquated.

(3) YEAR AND A DAY. i. e. Within the Year and Day after the Death. 2 Haw. P. C. c. 23. f. 33.

(4) WHERE THE FELONY WAS COMMITTED. But now by the Statute of Ed. 6. an Appeal of Murder may be brought in the same County where the Person feloniously stricken or poisoned shall die. 2 & 3 Ed. 6. c. 24. 2 Haw. P. C. c. 23. f. 35. c. 29. f. 48, 49.

|| 2 Haw. P. C.
c. 9. f. 39.
2 Haw. P. C.
c. 9. f. 41.

† 2 Inf. 176.
Sr. P. C. 64. b.
c. 14.
2 Haw. P. C.
c. 9. f. 42.

|| continue the same on from County to County without Intermiffion; and if Justice be denied either to the Plaintiff or to the Appellees, our Will is, that upon reasonable Suggestions they may remove the † Appeal out of the County Court by Writ out of our Chancery, returnable before us wherefoever we shall be in England.

§ West. 1. c. 15.
31. Car. 2.
2 I. f. 190.
Brac 122. b. f.
3. 7. &c. 124.
1. 4. — 128. f. 13.
130. f. 10. 11.
Fle. 37. f. 6. 39
f. 3. 41. f. 18.
St. P. C. 1. 2.
c. 18.
2 Haw. P. C.
c. 15. f. 53.
* West. 1. c. 14.
2 Inf. 182. 385.
3 Inf. 138. 231.
St. P. C. 1. 1.
c. 48, 49.
2 Haw. P. C.
c. 27. f. 128.
&c.
c. 29. f. 15. f. 36.
&c. f. 45.
See ref. to Brac.
Fle. and Mir. on
this Head p. 18.

III. And we forbid that any Person be detained in Prison for the Accessory Facts, if he can find Mainpernors § to answer for him, (5) until some Person be attainted of the Fact itself, nor that any one proceed against the Persons appealed of the Force, * or of the Accessory (6) Facts, before the Principal is attainted, or until those who are appealed of the principal Fact are outlawed for their Contumacy; and if the Person appealed as Principal be acquitted of the Fact, our Will is, that those who are indicted or appealed of the Force, and of the Receipt, and of Commanding, or of the other accessory Facts, shall be thereof acquitted by the same Judgment.

† Brac. 138 f. 2.
Fle. 48. 1. 6.
Mir. c. 2. f. 15.

IV. When the Parties appear in Judgment, let the Plaintiff set forth his † Appeal

(5) UNTIL SOME PERSON BE ATTAINTED. By the 1st An. c. 9. if the Principal stand mute, &c. the Accessary may be proceeded against. 2 Haw. P. C. c. 29. f. 43.

(6) ACCESSORY FACTS. Serjeant *Hawkins* seems to be of Opinion, that no Accessary may be compelled to answer before the Principal has appeared and answered, 2 Haw. P. C. 29. f. 45.

peal, and the Defendant defend the * Felony, * Brac. 138. b. f. 6.
 in words agreeable to the Form of the Court, Fle. 49. f. 1.
 and then aid himself by Exceptions.

V. As that the Appellant is † outlawed † Brac. 141. a. Fle. 31. f. 6.
 or adjudged to Death for Felony, or has Mir. c. 3. f. 10,
 abjured the Realm ; for these Facts being [f. 44. a.]
 proved they shall not be bound to answer
 such Appellants ; he may likewise * abate * St. Glo. 6. Ed, 1. c. 9.
 the Appeal several Ways, as if the Appeal 2 Inf. 317.
 was not commenced in the County where Brac. 140. b. f. 5.
 the Felony is supposed to have been com- Fle. 49. f. 2, 5,
 mitted, or for Variance † between the Appeal 10, &c.
 made there and in the Roll of the Coroner, Mir. c. 3. f. 13.
 or if there is any other Male * Relation † Brac. 140. f. 3.
 nearer of Blood, who has a better Title to Fle. 49. f. 5.
 bring the Appeal, or that the Plaintiff has * Mir. c. 3. f. 18.
 no Right at all to bring it, he being no way of
 his Blood, nor of his Homage, nor his Fos-
 ter Child, nor his *Mainpas*, nor his God-
 son ; (7) or that there is Homage * sub- * Brac. 141. a.
 sisting between the Plaintiff and Defendant, Fle. 49. f. 7.
 or that the Fact does not amount to Felo-
 ny ; it may likewise be abated for Omit-
 sion, † as if no Felony is named in the Ap- † Brac. 141. f. 5.
 peal, or if the Breaking of our Peace, or Fle. 31. f. 5—50.
 other Words of the Substance of the Appeal f. 20, 21.
 are omitted, as before declared ; so likewise
 for Error, § as for putting *Reyner* for *Rey-* § Brac. 141. a.
naud, as shall be taken Notice of among Fle. 50. f. 15.

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(7) HIS GODSON. *Bracton* likewise agrees with our Author ; but at this Day, neither the Homager, the adopted Child, the Domestick, or the Godson, can bring an Appeal of Murder *Stamford's P. C.* p. 60. a.

§ 1 Inf. 139.
 Brac. 126. f. 7.
 141. a.
 Fl. 41. f. 15. 50
 f. 16.

Exceptions; also for the § Want of due Prosecution in the Plaintiff, as if he sued at two Counties, (8) and made Default (9) the third, and he can prove it by the Roll of the Coroner.

[f. 44. b.]

|| Brac. 126. f. 8.
 139. f. 10. 142.
 b. f. 11.
 Fle. 50. f. 16.
 52. f. 38.

VI. In these Cases our Will is, that if the Defendant can prove that the Plaintiff was nonsuited in the County before the issuing of our Writ to remove the Appeal, the Justices shall adjudge the Plaintiffs to Prison for their Nonsuit, and their Pledges shall be amerced; but if the Appellant was prevented by Death || or Sickness from carrying on the Prosecution, in such Case the Pledges shall not be amerced for the Nonsuit; we grant also to such Person, whose Right it is, the like Liberty of reviving the Suit and prosecuting it until the Appellees are either acquitted or condemned.

Brac. 125. f. 6.
 128. f. 12.
 Fle. 40. f. 5.
 Mir. c. 2. f. 8.
 p. 128.

VII. And if any one of the Appellees † offers himself before he is (10) outlawed, or if the Appellant makes Default, let him be admitted to Mainprize as to our Suit, until the

(8) TWO COUNTIES. i. e. Two County Courts.

(9) AND MADE DEFAULT THE THIRD. Herewith agrees *Fleta* c. 27. f. 15. but when *Bracton* wrote, the Appellant might have resumed his Appeal though there had been an Intermission of two or three County Courts without being liable to a Non-suit, as the Negligence of the Appellant turned to the Advantage of the Defendant. *Bracton* 126. f. 7.

(10) BEFORE HE IS OUTLAWED. i. e. Before the fifth County Court. *Bracton* 125. b. f. 6.

the first § Gaol Delivery, in Cases where he § *Fle. 41. f. 17.*
is (11) replevisable.

VIII. But although they acquit themselves as to our Suit, yet the Suit of any other, who will prosecute within the Year and the Day, is not thereby taken away.

IX. With Respect to the Action, the Defendant may answer by Way of Exceptions several Ways; for he may plead, that at another Time * he was appealed in our Court by the same Person for the same Felony, and that he was acquitted thereof before such Justices; and if he proves this by the Record thereof, let him be awarded quit, and the Plaintiff to Prison; or he may say, that although he committed the Fact, yet he did not do it with a felonious Intent, but through a † Necessity in defending himself, or his Wife, or his House, or his Family, or his Lord, or his Lady, from being killed; or that he killed him in Defence of our Peace, or by Mischance without Felony prepened; in all which Cases if the Appellees, can prove these Facts they shall have Judgment of Acquittal.

* 3 *Inf. 213.*
Brac. 140. b.
f. 5. & 141. f. 5.
Fle. 49. f. 5.
St. P. C. 105.
&c.
2 Haw. P. C.
c. 35.
2 Hal. P. C.
c. 31.

† *Brac. 120. b.*
c. 4. f. 2.
Fle. 49. f. 8.
Mir. c. 3. f. 18.
c. 4. f. 16. p. 254.
[*f. 45. a.*]

X. And if the Defendant cannot aid himself by any Exception, let it be in his Election * to defend the Felony by his Body (if the Plaintiff be able to fight) or by the

* *Brac. 137. f. 3.*
138. b. f. 6.
Fle. 50. f. 27.
2 Haw. P. C. c.
30. f. 12.

L 4

Country

(11) REPLEVISABLE. See *West. 1. c. 15.* and 2 *Inf. 186.* What Persons areailable by that Statute, and what not.

† 2 Inf. 179.
Fl. 1. f. 33.
2 Hal. P. C. p. 317.

§ Glan. 113. b.
c. 1.

Brac. 137. f. 4.
Fle. 51. f. 32.
Mir. c. 4. f. 16.
P. 2 3. 260.

|| 1 Inf. 33 b.
2 Inf. 68. 317.
Mag. Ch. c. 34.
Brac. 125. f. 3.
— 148. b. c. 29.
Fle. 53. f. 1.
Mir. c. 2. f. 7.
St. P. C. 59. c. 7.
2 Haw. P. C.
c. 23. f. 36. &c.
† 1 Inf. 254. b.
2 Inf. 320.
* 2 Inf. 68. 317.

Country, and if he will not do it, let him be put to his (12) Penance † until he prays the Aid of the Court, and according to the Event of the Battle, or of the Verdict of the Country, Judgment must be given.

XI. Let the § Punishment of Felons who have committed Murder, be Death with Disinheritance of their Heirs, and with greater Punishment if the Offence requires it.

XII. As to Women, our Will is, that no Woman shall || bring an Appeal of Felony for the Death of any Man, except for the Death of her Husband killed, ‡ with whom she (13) cohabited, and the same be brought within the Year and Day;* for of an Infant (14) killed within her Womb, she

(12) PUT TO HIS PENANCE. See Note p. 138.

(13) WITH WHOM SHE COHABITED. These Words are not to receive the strictest Interpretation, for it is generally holden that a Wife who hath eloped from her Husband may have an Appeal of his Death. 2 Haw. P. C. c. 23. f. 36, 37.

(14) AN INFANT KILLED WITHIN HER WOMB. The Law of England, with Respect to the Right, a Woman had to bring an Appeal of Death of an Infant killed within her Womb, seems to have undergone several Changes; for in the 2d of King John, a Woman brought such an Appeal, and no Exception was taken to it on that Account, as appears by the following very antient Record * never before published; yet by a Judgment in the

* Mich. Term, 2 K. John, Roll 3.

Agnes Daughter of Saxi appeals, John de Paris, That whereas she being in Labour, he came and broke into her House, and dragged her out by her Feet, and beat her with a certain so that she lost her child, &c.

she may not bring any Appeal, no one being bound to answer to an Appeal * of Felony where the Plaintiff cannot set forth the Name (15) of the Person against whom the Felony was committed.

XIII. With Regard to an Appeal† of Rape, our Pleasure is, that every Woman, whether Virgin or not, shall have a Right to sue for Revenge of the Felony by Appeal in the County

* 2 Inf. 317.
† West. 1. c. 13.
West. 2. c. 34.
6 R. 2. c. 6.
1 Inf. 123. b.
2 Inf. 180. 433.
434. &c.
3 Inf. 60.
Gl. 1. 14. c. 6.
Brac. 146. c. 28.
Fle. c. 35. p. 53.
54.
Mir. c. 1. f. 12.
c. 2. f. 21. c. 3.
f. 21. c. 4. f. 16.
p. 261.
St. P. C. 21. c.
14. 61. c. 10.
Haw P. C.
c. 41. l. 2. c. 23.
f. 58. &c.
Hal. P. p. 631,
632.

the 24th of *Hen. 3.* given us by the learned Editor of the 1st Book of *Fleta*, and by *Bracton*, it appears That it was then holden, That a Woman was intitled to no other Appeal than that of the Death of her Husband, and of Rape.

But again, in the 45th of *Hen. 3.* according to another Record presented to us by the same learned Hand; it seems to be admitted That a Woman might have an Appeal of the Death of an Infant killed within her Womb, as well as of the Death of her Husband, and of Rape; yet our Author, whose Book was published in the Name of *Ed. 1.* and under the Inspection of the then Judges, says expressly Such Appeal does not lie, though *Fleta* who wrote later still, restores the Law as it stood in the Time of King *John*.

See Note on *Fleta*, c. 35. f. 1. p. 82. *Brac.* 125. c. 11. f. 3. — 148. b. c. 29. f. 1. *Fleta*, c. 35. f. 1. 3. p. 53.

The Citizens of *Lincoln* come and produce the King's Charter, which witnesseth That the said Citizens ought not to be impleaded for any Plea out of the Walls of their City, and that they ought not to be obliged to wage Battel in any Appeal, but try the Matter according to the Custom of the Laws and Liberties of the City of *London*, and they claim Conusance of the same Liberty, a Day is given, &c. *Mss. Lat. Lin. Inn Lib.*

(15) THE NAME OF THE PERSON. In every Appeal of Death, it must appear who the Person was that was killed; because otherwise it cannot appear that the Plaintiff is intitled to the Appeal. 2 *Haw. P. C.* c. 23. f. 78.

[f. 45. b.]

County within (16) forty Days, but after that Time she shall lose her Suit; in which Case if the Defendant confesses the Fact, but says that the Woman at the same Time conceived by him and can prove it, then our Will is, that it be adjudged no Felony, because no Woman can conceive if she does not (17) consent.

C H A P.

(16) WITHIN FORTY DAYS. Serjeant *Hawkins* says, It seems that at this Day an Appeal of Rape may be brought in any reasonable Time, the Judgment whereof lies in the Discretion of the Court; that the Stat. *West.* 1. c. 13. which turned this Offence into a Trespass, and limited forty Days for the Suit of the Person ravished is repealed; and the Stat. *Glou.* c. 9. which limits Appeals to the Year and Day, extends only to Appeals of Death; and *West.* 2. c. 34. which makes Rape a Felony again, limits no Time for the bringing it, but leaves it to the Construction of Law, which shall be agreeable to the antient Rules of Law in such Points wherein the Statute is Silent. 2 *Haw. P. C.* c. 23. f. 72.

(17) IF SHE DOES NOT CONSENT. Serjeant *Hawkins* observes, that this Opinion seems very questionable, not only because the previous Violence is no Way extenuated by such a subsequent Consent, but also because if it were necessary to shew that the Woman did not conceive, this Offender could not be tried till such Time as it might appear whether she did or not; and likewise because the Philosophy of this Notion may very well be doubted of. *Haw. P. C.* c. 41. f. 2. L. C. J. *Hal.* likewise says, this Notion is not Law. *Hale* 631.

C H A P. XXIV.

Of Appeals § of Robberies and Larcenies.

§ 1 Inf. 287, 288.

2 Inf. 68. 189.

3 Inf. 68. 107.

St. P. C. l. 1.

c. 15. 20. &c.

—1. 2. c. 9. 16.

2 Haw. P. C.

c. 23. f. 44. &c.

Sect. I. **W**ITH Respect to Robberies and Larcenies, our Will is, that other Persons may bring an Appeal and sue for Revenge of such Felonies, so as they do it within a Year (1) and a Day, and the Appeals be commenced in the (2) Counties where the Felonies were committed.

II. The Appeals may be made in this Manner, * *John* who here standeth appeals *Peter* who is there, that whereas the same *John* on such a Day, in such a Year, had a certain Horse in his Stable or elsewhere,

* Brac. 146. c. 26. f. 1.

150. c. 32. f. 3.

Fle. 55. f. 1, 2.

—58. c. 39. f. 1.

Mir. c. 2. f. 16.

in

(1) WITHIN A YEAR AND A DAY. The Judges when our Author wrote, and for a considerable Time after, expounded the Statute of *Glou.* c. 9. to extend to all Kinds of Appeals, as well as an Appeal of Death, but it seems to be agreed at this Day, that an Appeal of Larceny may be sued at any Time, as well after as within the Year and Day, if the Plaintiff has made fresh Suit. *Stam. P. C.* c. 12. p. 62. 2 *Haw. P. C.* c. 23. f. 48.

(2) IN THE COUNTIES. See a notable Record of P. 30 Ed. 1. in *Selden's* Notes on *Hengham* of an Appeal of Robbery being quashed, because it was brought before the Coroners of the City of *York*, without proper Jurisdiction. *Seld. Notes on Heng.* p. 137.

(3)

in such certain Place, the same *Peter* there came, and the same Horse feloniously as a Felon stole from him, took and led away against the Peace, and that he did this with a wicked Intent, the same *John* is ready to prove by his Body as the Court shall award he ought to do it; and if the Horse was stolen out of his own Custody, or if he was robbed of it, let him change the

* Brac. 146. f. 2.

* Words of his Appeal according to the Circumstances of the Case; so if the Plaintiff be mayhemed, or in such other State as that Battle ought not to be joined.

† Brac. 146. f. 1,
2. 151. f. 3.
Fle. 55. f. 3.

III. Next let *Peter* answer and † defend the Felony by Words proper for his Defence, and this may be either by defending himself by Exceptions, or if there are no Circumstances to prevent the Battle, by his Body, or by the Country, or by Voucher to Warranty if he has any.

[f. 46. a.]

|| Brac. 151. f. 5.
Fle. 55. f. 4.

IV. If he pleads that the Horse was his own, || and that he took him as his own and can prove it, let the Appeal be changed from Felony to the Nature of a Trespass, and let it be awarded that the Defendant lose his Horse for ever; so of all Usurpations in the like Cases, because our Will is, that every one proceed rather by due Course of Law than by Force.

† Brac. 151. f. 5,
6.
Fle. 55. f. 4. 5.

V. If the Defendant vouches to † warrant by Aid (3) of our Court, and the Vouchee comes

comes

(3) BY AID OF OUR COURT. *Bracton* gives us the

comes by Order of our Court, and enters into Warranty, the principal Plea shall cease, and the Appeal begin a new against the Vouchee, and according to his Defence, let Judgment be given.

VI. If the Vouchee will not enter into Warranty, the Vouchor may say thus, *Peter* who is here, says That *Thomas* who is there, wrongfully refuses to warrant the said Horse against *John* who is there, who challenges it as his own; and he wrongfully refuses, for this Reason, because he sold or gave the same Horse to him the said *Peter*, or lent the same to him such a Day and Year, in such a Place; and that he did so, the same *Peter* offers to prove by his Body, in such a Manner as the Court shall award he ought to prove it; and in this Case it behoves the Vouchee to defend * such Contract, either by his Body, or by the Country, so as that Judgment of Death may pass upon one and the Vouchor be adjudged to go quit, and the Thing challenged

* Brac. 151. 1. 5.
Fle. 55. f. 5.

[f. 46. b.]

the Form of the Writ of Summons, and is as follows,

The King to the Sheriff of L—— greeting.——

We command you, that you cause such a one to appear on such a Day, at such a Place, and at such a County Court, to answer in the same Court concerning the Warranty of a certain Horse, said to be stolen, and whereof the said—in the said Court has vouched him to Warranty against the said—Witness, &c.

Bracton 151. f. 6.

† 2 Inf. 319.

3 Inf. 242.

St. P. C. 66. a—

165. c. 10.

2 Haw. P. c.

c. 23. f. 49.

§ Brac. 151. b.

f. 7.

Fle. 55. f. 8, 9.

lenged be delivered to him who † chal-
lenged it if he properly prosecuted his Suit,
otherwise it shall belong to us.

VII. And if there be any Fraud § in
the Warranty, as if the Appellee by Collu-
sion vouches to warrant some Champion
or other strong Man, or Clerks, who
maliciously for Hire enter into Warranty,
and the Demandant prays Leave to lay open
the Fraud and the Malice, to wit, that it
is done with a Design to make him with-
draw himself from the Battle for Fear of
the Might of the Champion, or for his own
Safety ; or inasmuch as the Vouchee be-
ing a Clerk he intends to purge him-
self in Court Christian, should he be at-
tainted by the Law, let him be admitted
thereto ; and if the Appellee be attainted of
the Malice, both he and his Vouchee shall
have Judgment (4) of Death, and the De-
mandant shall recover his Demand.

VIII. As to Larcenies and Robberies
committed in Time of Peace, where the
Criminals were not recently pursued ; the
Owners of the Things may bring their Ap-
peals

(4) SHALL HAVE JUDGMENT OF DEATH. Accord-
ing to our Author, both the Appellee and Vouchee are
to suffer Death for the collusive Warranty ; but in *Bracton*
and *Fleta*, the Judgment, in Case of a Hireling Champion,
is only that he should lose a Foot and a Fist, *Brac.* 151.
b. f. 7. *Fle.* 55. f. 8. And in Case a Clerk was the
Vouchee, he was to be committed to Prison. *Fleta*
55. f. 9.

peals of Felony within the Year and the Day as in other Felonies, but after that Time they shall lose their Suit, and it shall belong to us; and thus it shall always be within the Year and the Day, if no other Suit intervenes, and so in all Manner of Felonies; and if the other Demandants bring their Suit in Form of Trespass, they shall be heard, if they have not before commenced their Suit in Form of (5) Felony, || for they cannot by withdrawing their Suit deprive us of ours; but wherever they have sued in Form of Trespass, notwithstanding our Peace has been broken, we will not prosecute. [f. 47. a.] || Fle. 55. f. 11

IX. And if any Appellee has withdrawn himself, let him be demanded from County to County till he either appears or is outlawed.

X. And when the Person appealed is come into Court, and the Appellant has appealed him by Words of Felony, and the Appellee defended himself by proper Words of Defence, let him in the first Place consider whether he can aid himself by general Exceptions, to wit, to the Person of the Judge,* as that he has not Cognizance to hear and determine such Appeal, for such Exception may be true in many Instances, as if the Fact wherewith the Defendant is charged

* 1 Inf. 307.
Brac. 399. b. c. 1.
f. 1. 3.
Ele. 427. c. 36.
f. 3. 7.
Mir. c. 3. f. 3.
p. 185.

(5) IN FORM OF FELONY. For *Fleta* says the Prosecutor cannot from a criminal Prosecution descend to a civil one.

charged was not within his Jurisdiction, which Exception holds also good in Counties ; or where the Judge is not authorised thereto by our Writ ; or he may except to

§ Brac. 141. f. 5.
Fle. 31. f. 6.
49. f. 9.
Mir. c. 3. f. 10,
11.

the § Person of the Appellant, which may also be fundry Ways ; or to his own Person ; but if no Objection lies against either of the Persons, then let him see whether he can aid himself by general Exceptions to

† Brac. 140. a.
146, f. 1.
Fle. 49. f. 3.
Mir. c. 3. f. 19.

† abate the Appeal ; and if he cannot, he may still aid himself by Exceptions to the Action, as that the Thing challenged is not of the Value of Twelve-pence, or by many others ; and if he cannot avail himself by any of these Exceptions, or vouch any one to warranty, he may lastly defend himself by his Body, or by the Country ; and if he be attainted, let him have Judgment of * Death.

[f. 47. b.]

* 1 Inf. 288.
Brac. 146, b.
c. 26.
Fle. 58. c. 39.
f. 2.

XI. And the Appellant may afterwards proceed against the Receivers and the others who were aiding and consenting whosoever they are.

XII. And when one Man is appealed by || several, or several by one, and Battels are to ensue, let not the Battels be all joined at one Time, but at different Times.

|| Fle. 57. f. 20.

XIII. Nevertheless the Wife of ‡ a Felon may plead, that although she was privy to the Crime of her Husband, yet she neither could nor ought to accuse him as long as she was under Coverture, but this Answer must not be allowed in too general a Manner to such Wives as do not acquit themselves of the

† 3 Inf. 108.
Brac. 151 b. f. 9.
Fle. 35. f. 12.
Haw. P. C. c. 1.
f. 9. &c.
Hal. P. C. c. 7.
f. 3.

the

the Fact,† and of the Consent by the Country; for it may often happen that the Wives of Felons hold the Persons murder'd while their Husbands kill them, and in such Case both of them are guilty of Felony; and as for the Concubines* of Felons, they shall in no wise be considered as under Coverture.

† Brac. 151. b. f. 9, 10.
Fl. 56. f. 12, 13.

* Brac. 151. b. f. 10.
Fle. 56. f. 14.

XIV. And if it appears that any Woman who is adjudged to Death in this or any other Felony be § enseint (6) with Child, then Execution of the Judgment shall be respited until the Child be born.

§ Brac. 151. b. f. 10.
Fle. 56. f. 15.

XV. Felons, in this as in all other Felonies, may have Accomplices, Receivers, and Abettors, whom they may appeal for the Sake of prolonging their own Lives; and if they will become Provers, † then let the Coroner go to them, and hear the Confession of their Felonies, and cause such Confessions to be inrolled, and also their Appeals, together with their Names and the Names of the Appellees.

[f. 48. a.]
† 3 Inf. 129, 130.
Brac. 122. b. f. 4.—152. f. 1.
Flet. 56. f. 16.
Mir. c. 1. f. 13.
p. 104, 105. c. 2. f. 3. p. 117.
c. 3. f. 14.
St. P. C. 142. c. 52. &c.
2 Haw. P. C. c. 24.

XVI.

(6) ENSEINT. Brac. 151. b. f. 10. and Fle. 56 f. 14. cite a Text out of the Imperial Law to the same Purpose,

D. lib. 48. tit. 19. l. 3. See also D. lib. tit. 5. lib. 18. And it seems as if by that Law Execution was to be respited though the Woman had conceived never so short a Time; and indeed with us, the Jury in ancient Times often found no more than that the Woman was *enseint* or pregnant; but by our Laws as now settled, she must be *enseint* with a live Child, i. e. found by a Jury of Matrons quick with Child. 2 Haw. P. C. c. 51. f. 9. Hal. P. C. p. 413.

§ 3 Inf. 129, 130.
Brac. 152, f. 1,
2. — 153. b. f. 4.
Fle. 56. f. 16.
Mir. c. 1, f. 13.
p. 105.

* 3 Inf. 129.
Brac. 152. f. 1,
153. b. f. 4.
Fle. 56 f. 16.

† Brac. 153. a.
f. 2. 153. b. f. 4.
Fle. 57. f. 18.

|| Brac. 153. f. 2.
4.

Fle. 57. f. 19.
• Reg. 133. b.
Mag. ch. c. 26.
2 Inf. 42.

West. 1. c. 11.
2 Inf. 177.

Glouc. c. 9.
2 Inf. 315.

West. 2. c. 9.
2 Inf. 420.

28 Ed. 3. c. 9.
4 Inf. 182.

Brac. 121. b.
f. 3. 123. f. 8.

&c.
Fle. 34. f. 15.

39. f. 3.
Mir. c. 2. f. 10.

c. 5. f. 4. p. 322.
Haw. P. C. c. 29.

f. 24.

XVI. And if the Provers make the Justice of their Appeals appear, and in no Point have varied from the Truth, then they shall have our § Pardon of Life and Limb where we shall see meet, because they have stood out for our Peace.

XVII. But our Will is, that from the Time any such Prover has failed * of his Appeal, he shall be no more heard against any of the others whom he has appealed, but they shall all be adjudged quit as to his Appeal, and he shall have Judgment of Death; and if the Persons appealed are of suspicious Character, let them answer at our Suit, † and clear themselves from the Charge, but if they are of good Character, then we permit them to be let out by sufficient Mainprise || as to our Suit until the Eyre of the Justices, or until we shall take Cognizance thereof against them.

XVIII. We grant the like Favour to those who are indicted of any Felony thro' hatred, and by Procurement of their Enemies, which Hatred may be found by Inquest by Virtue of our Writ, (7) *de Odio* * *et Athia*, saving to every one his Suit.

XIX.

(7) *DE ODIO ET ATHIA*. See the Form of this Writ, and that of *de ponendo in Ballium*, in the Register, fo. 133. b. and Brac. 123. f. 7. 9. — The Writ *de Odio et Athia*, was by Mag. Cha. c. 26. grantable without Fee, and if the Prisoner by an Inquest taken thereon by the Sheriff was found to have done the Fact by Misadventure or *se defendendo*, he might be mainprized by twelve Men upon issuing out the other Writ, called *de ponendo in Ballium*.

XIX. As to Pidgeons, † Fish, or Bees, or other unreclaimed Animals, we ordain that no Man have Judgment of Death on account of them, unless they have been feloniously stolen out of Houses; or if they are tame Beasts, out of Parks.

† Brac. 351. b.
f. 7.
Fle. 56. f. 20.
58. f. 26, 27.
[f. 48. b.]

XX. And no Appeal lies where the Damage is under Twelve-pence, nor in any Case where it is found by Examination of the Justices that the Offence is rather Trespas than Felony; as where the Appeal is made of a Wounding, and it appears to be only a Bruise or a || Scratch.

|| Brac. 144. f. 2.
145. a. f. 2.
Fle. 59. c. 41,
f. 3.

M 2 C H A P.

Ballium. But these Writs seem to be obsolete and indeed useless, inasmuch as the Party may probably be sooner delivered in the usual Course by the Coming of the Justices of Goal Delivery. *Haw. P. C. c. 29. f. 24.*

This Writ was taken away by the Stat. *Glou. 6. Ed. 1. c. 9.* and accordingly *Fleta* who wrote after that Statute p. 34. f. 15. takes Notice of its being prohibited; but *Britton* who died in the 3d of *Ed. 1.* gives us the Law as it stood at that Time.

CHAPTER XXV.

Of Appeals, Of Mayhems.

* Glouc. c. 8. Sect. I. **C**ONCERNING Mayhems, * our
 1 Inf. 126, 127. Will is, that the maimed
 288.
 2 Inf. 312, 313. may bring their Appeals of Felony against
 316.
 3 Inf. 62, 118. such Felons; and when any Appellee shall
 Gl. 14. c. 1. p. be attainted of such Felony and Judgment
 114.
 Brac 144. b. f. 3. is to be given, let the Judgment be this,
 & 144. c. 24.
 Fle. 50. c. 40. that he lose the like (1) Member as he de-
 Mar. c. 1. f. 9. prived the Plaintiff of; and if the Plaint
 p. 37. c. 2. f. 19. be made against a Woman who deprived a
 c. 3. f. 23. c. 4. Man of his Privities, she shall have Judg-
 f. 17.
 St. P. C. 1. 1. ment to lose a Hand, being the Mem-
 c. 48. l. 2. c. 23. ber with which she committed the Of-
 f. 15, 16. &c.
 Haw. P. C. c. fence.
 44.
 2 Haw. c. 23.
 f. 15, 16. &c.

II.

(1) THE LIKE MEMBER. By the 22 and 23 Car. 2. c. 1. when a Person with Malice prepenſe and by laying in Wait maims another, it is Felony without Benefit of Clergy; but in other Caſes of Mayhem, altho' the Indictment or Appeal is *Felonicè*, yet the Punishment is only Fine and Imprisonment. *Haw. P. C. c. 44. f. 3.*

At this Day ſave for drawing a Sword on any Judge in the Preſence of any of the King's Courts at *Westminster*, &c. or for ſtriking and drawing Blood in the Preſence of the King, there is no Loſs of Member. *Haw. P. C. c. 21. f. 1, 2, 3. Selden's Notes on Hengham. p. 133.*

II. Where the Prosecution of this Felony is at our Suit, the Judgment shall not be of Loss for Loss; but if the Appeal be abated, the Felons shall answer for such * Felonies; and if they are attainted at our Suit, they shall be awarded to Prison, and fined besides for breaking our Peace.

* See Note in Hal. P. C. 634.

III. Our Will is that nothing be deemed a Mayhem but the Deprivation of some Member whereby a Man is rendered less § able to fight; as of an Eye, or a Hand, or a Foot, or by his Skull being fractured, or knocking out his fore Teeth; but the Loss of the † Grinders, or an Ear, or the Nose, is not held a Mayhem, but a Disfigurement only of the Body.

[f. 49. a.]

§ Brac. 145. l. 3.
Fle. 58. c. 40. f. 1.

Mir. c. 1. f. 9. p. 37.

† Brac. 145. f. 4.
Fle. 59. c. 40. f. 2.

Mir. c. 1. f. 9. p. 37.

IV. Appeals of Felony* may also be brought for Woundings (2) and for Imprisonment of Freeman, and for every other enormous Trespass; but for avoiding the perilous Risques attending Battels, it is (3) much better to proceed by our

* 1 Inf. 126. b.
2 Inf. 52. 53. & c.

4 Inf. 182.
2 Haw. P. C. c. 23. f. 15.

Brac. 144. c. 23.
144. b. c. 24.

145 c. 25.
Fle. 59. c. 41, 42.

Mir. c. 2. f. 18.

& 20. p. 39—
c. 3. f. 22, 23.

p. 205.

M 3

Writs

(2) WOUNDINGS AND IMPRISONMENT. See the Form of the Appeal. Mir. c. 2. f. 18. 20. But Appeals of this Kind have been out of Use, and turned to Actions of Trespass for these many hundred Years. 2 Haw. P. C. c. 23. f. 15.

(3) MUCH BETTER TO PROCEED BY OUR WRITS OF TRESPASS. We have an Instance of this in the Case of *William Joye* against *Guy Mortimer* Rector of *Kingston* in the 7th and 8th of Ed. 1. the Record of which being translated is as follows,

William Joye of *Kyngeston*, complains of *Guy de Mortimer*, Rector of the Church of *Kyngeston*, and *Thomas le Clark* of *Harengton*, of this, That *Thomas* together with others by Command of the aforesaid *Guy* assaulted beat and evilly treated the same *Wm.* so that his Life was de-
spaired

* Brac. 145. b.
f. 3.
Fle. 60. f. 7.

Writs of Trespass than by Appeals, for if the least Variance be found between the Appeal as entered in the Roll of the Coroner and as before set forth in the County Court, or if there has been any Omission or Interruption of Counties, or other Error, the Plaintiff shall be commanded to Prison for not having performed what he bound himself to do, and shall make Satisfaction to the Defendant, and afterwards to us; but if the Appeal is maintained and the Defendant has put himself as to his Innocence or Guilt on the Country, and the Jury say, that he is guilty, the same Judgment * shall be given against him, as would have been in Case he had been vanquished in Battle, to wit

spaired of; and the said *Guy* with his own proper Hand, and with his Knife cut off the upper Lip of the same *Wm.* whereupon he says, that he is injured, and hath Damage to the Value of one hundred Pounds, and thereof brings Suit. And the aforesaid *Guy* and *Thomas* come and say, that they are Clerks and ought not to answer here, and being often asked whether they would answer, they persist in their being Clerks, and will not answer without Leave of their Ordinaries; And because the present Complaint does not touch Life and Limb, but is of a certain personal Trespass, and they refuse to give an Answer in the Court of the Lord the King to the said Complaint; IT IS CONSIDERED, That the aforesaid *Guy* and *Thomas* stand convicted of the aforesaid Trespass, and make satisfaction to the aforesaid *Wm.* Joye in Damages, to wit, each of them in one hundred Pounds, and be in Mercy of our Lord the King, and be committed to Gaol for the Trespass, &c.

Note on 2 *Hale's P. C.* p. 325.

wit, Wound (4) for Wound, Imprisonment for Imprisonment, and Trespass for Trespass.

V. But in such Cases our Will is, that the Judgment be so far mitigated as that the Appellees be sent to Prison and there remain in Irons till they have made Satisfaction to the Plaintiff; and they shall afterwards be fined for breaking our Peace.

VI. The like Judgment shall be given [f. 49. b.] where the Plaintiff proceeds by our Writ of Trespass; but some § Trespasses deserve a greater Punishment than others, as Trespasses committed in Time of Peace against † Knights or other honourable Personages by *Ribauds* and such-like vile Persons; in which Case our Pleasure is, that if a *Ribaud* be attainted at the Suit of any Knight of having feloniously struck him without any Provocation from the Knight, the (5) *Ribaud* shall

§ 3 Inf. 141.

† 2 Inf. 594.
3 Inf. 157.

(4) WOUND FOR WOUND. In the earlier Ages the Judgment was still more severe, for by the very antient and curious Record of the 5th of *Hen* 3. published by the Editor of the first Book of *Fleta*, it appears that the Defendant being vanquished in Battel had Judgment to lose his Eyes and his Testicles, though the Appeal was only for Wounding the Appellant in the Arm. But *Fleta* says, the Justices were guilty of an Error in giving such Judgment. Note on *Fleta* l. 1. c. 34. f. 25. — *Flet.* p. 59. c. 40. f. 4.

(5) THE RIBAUD SHALL LOSE THE HAND WITH WHICH HE OFFENDED. Mr. *Selden* says, that tho' he did not remember an Example of this in Practise, yet he found an Instance in the Pipe Rolls of *Hen.* 2. of one being fined a

shall lose the Hand with which he offended.

VII. We have said in Time of Peace, because as to Mischiefs committed at Tournaments * and Jufts, or fuch martial Feats, we will not interpose, if no Indignity was offered to our Person.

* 3 Inf. 160.
Mir. c. 1. f. 13.
p. 99.

VIII. Our Will also is, that the Penalties ordained by us and our Council, and proclaimed to be put in Force with Regard to Strangers † abiding beyond a certain Time in our Dominions, be observed and executed according to such Ordinances.

† 2 Inf. 57.
3 Inf. 103.
Mir. c. 1. f. 3.
p. 20.

a hundred Pounds for striking a Knight, and of another at forty Marks, because he was present when the Knight was compelled to swear that he would not complain of the Injury done to him. *Selden's Title Honour*, c. 5. f. 37.

These *Ribalds* were a kind of sturdy Beggars, and in the 50 Ed. 3. the Commons petitioned the King “ That “ *Ribalds* and sturdy Beggars might be banished out of every Town ; ” and the King's Answer was, “ That “ touching *Ribalds*, the Statute of *Winchester*, and the “ Declaration of the same, with other Statutes of *Robertsmen*, should be executed.” *Cot. Ab. Records*. p. 125. No. 52.

Here end the Pleas of the Crown.

T A B L E.

I N T R O D U C T I O N.

Sect.

- I. **T**H E Stile and Salutation of the King.
- II. The Proem.
- III. The King's Command of due Observation of his Laws, with a Saving as to his Power of Repealing them, &c. with the Consent of his Parliament ; saving also particular Customs.
- IV. The King's Distribution of his Jurisdiction, as to the Administration of Justice, to his several Courts.
- V. The Jurisdiction reserved to himself.
- VI. Of the Office of Steward of the Household.
- VII. Justices itinerant to be assigned.
- VIII. The Office of Earl Marshall.
- IX. Of the Authority of the Justices of the King's Bench.
- X. Of the Coroner of the King's Household and his Office.
- XI. Of Sheriffs and their Office
- XII. Of Coroners of the County and their Office.
- XIII. Of the Justices of the Common Pleas and their Office.

T A B L E.

- XIV. Of the Treasurers and Barons of the Exchequer and their Jurisdiction.
 - XV. Of the Justices of Assize.
 - XVI. Of the Justices of Gaol Delivery.
 - XVII. Justices not to erase their Rolls, or exceed their Jurisdiction.
 - XVIII. False Judgments, by whom to be amended.
 - XIX. No Coroners or Justices, except the Steward, Justices of Ireland and Chester, to appoint a Deputy, without the King's Leave.
 - XX. In inferior Courts who are the Judges.
-

Chap. I. Of Coroners.

- I. **W**HAT they are to bear Record of.
- II. **W**How to be chosen, and their Oath.
- III. Of the Coroner's summoning a Jury as soon as he has Notice of the Offence.
- IV. Of View of the Body.
- V. What is to be done if the Body is buried before View.
- VI. Defaulters on the Coroner's Inquest, by whom to be amerced.
- VII. The Manner of the Coroner's Inquiry when a Jury appears.
- VIII. Of attaching the Guilty, if they can be found.
- IX. How to proceed against those who have withdrawn themselves.
- X. To inquire whether any of the indicted ever found Surety, and the Names of such Sureties.
- XI. In case any of the Relations of the deceased would bring an Appeal, which of them shall be admitted thereto.
- XII. Of the Appellants finding Pledges to prosecute his Appeal.

T A B L E.

- XIII. Of the Coroners entering the Appeal and the Pledges, and causing the Bodies of the Persons appealed to be brought at the next County Court.
- XIV. What Course to be taken where several Persons are appealed.
- XV. How the Appellee is to be demanded, and if he does not appear, in what Manner he is to be outlawed.
- XVI. What is to be done where the Appellant makes Default.
- XVII. Exigent not to be awarded against Accessaries till Principal be attainted or outlawed.
- XVIII. When the Party is outlawed or has fled, the Coroner to inquire what *Decenna*, &c. he was in, and of his Lands and Chattels.
- XIX. Those who are attached before Outlawry of the Principal are to be bailed.
- XX. If the Murder was committed out of Doors, the Coroner to inquire who first found the Body, and how they are to be proceeded against.
- XXI. How the Coroner is to demean himself in his Inquiries.
- XXII. If accidental Death, the Coroner to inquire into the particular Circumstances thereof.
- XXIII. If drowned in a Well, to inquire to whom it belongs.
- XXIV. If occasioned by a Fall from a Mill, &c. what shall be a Deodand.
- XXV. If by Falling out of a Vessel or Ship, what to be a Deodand.
- XXVI. If by other Accident, what the Coroner is to do.
- XXVII. Engleshire to be presented.
- XXVIII. The Coroner in the Presence of the Sheriff to take the Confessions of Approvers, and inroll them.
- XXIX. The Coroner's Duty when the Felon takes to a Sanctuary.
- XXX. In Appeals of Rape, and for Woundings, what Circumstances he is to inquire into.

T A B L E

- XXXI. To inroll all Judgments of Death given in his Bailiwick by any other than the King's Justices.
XXXII. To have Cognifance in all other Appeals of Felony as well as of Murder.
XXXIII. To inquire of Treasure-trove, Wreck, Sturgeon, and Whales.
XXXIV. Sheriffs and Bailiffs to be attendant upon them and their Precepts.
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Chap. II. Of Eyres.

- I. **O**F iffuing a Proclamation for holding the Eyre, and what Persons are to pay Attendance at it.
II. How the Justices are to proceed, and in what Order.
III. Lords of Franchifes to exhibit their Claims, and the Method of proceeding therein.
IV. Proclamation that they may depart.
V. The Oath of the Sheriffs Bailiffs.
VI. The Oath to be taken by those whom the Bailiffs have summoned.
VII. The Oath to be taken by the Inquest.
VIII. The Articles to be read and delivered to the *Decennas*, and the Proclamation to be made thereupon.
IX. Coroners to deliver in their Rolls to the Justices.
X. The *Decennas* to give in their Presentments.

T A B L E.

Chap. III. Of the Articles of the Eyre.

- I. **W**HAT remained in the last Eyre to be first determined.
 - II. How to proceed against any of the King's Enemies who shall abide in the Land.
-

Chap. IV. Of Counterfeiters of the Seals, and of the Coin.

- I. **I**Nquiry to be made concerning Persons guilty of such Crimes.
- II. Concerning those who have counterfeited the Coin or put a greater Alloy in it than they ought.
- III. Concerning those who have coined any Money without the King's Leave.
- IV. Concerning those who clip the King's Coin, or embese it.
- V. Concerning those who counterfeit the Coin or bring into the Kingdom Money resembling the King's.
- VI. How such are to be proceeded against, and what Time is allowed them to prepare for their Defence.
- VII. If they will not plead, what Penance they are to be put to.
- VIII. How to proceed in Case the Criminal pleads his Clergy.
- IX. Of what Causes holy Church has Cognizance.
- X. How the Ordinary, if he claims a Criminal not intitled to the Privilege of Clergy, is to be punished.
- XI. Of Approvers, and taking their Confessions.

T A B L E.

- XII. If the Party appealed plead that the Fact was committed before the last Eyre, and not presented, what is to be done.
 - XIII. Of challenging the Jury.
 - XIV. The Oath of the Jury.
 - XV. The Judge's Charge to the Jury.
 - XVI. How the Jury are to be kept together, and punished in case of Misdemeanor.
 - XVII. What to be done if the Jury are not all unanimous.
 - XVIII. Of the Justice's Examination of the Jury as to the Grounds of their Verdict.
 - XIX. Where the Fact is doubtful ; on which Side the Jury ought to find.
 - XX. If the Appellee is not guilty, what Judgment to be given.
 - XXI. If guilty of Treason, what Judgment.
 - XXII. For counterfeiting the Seal and Coin, in what Cases Appeal lies.
 - XXIII. For Forgery of Writs, how the Offenders are to be proceeded against.
 - XXIV. For clipping and counterfeiting the Coin, how.
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Chap. V. Of Homicides.

- I. **H**omicides and Murders, and those who are Accessories in them, to be inquired of.
- II. What Persons shall be said to be guilty of Homicide.
- III. How to be proceeded against.
- IV. When arraigned, how to be treated.
- V. If found guilty, what Judgment they are to receive, and what they forfeit.
- VI. What to be done where a Man is found with a bloody Knife in his Hand near the Person murdered, or there is other violent Presumption.
- VII. Blood how far corrupted.

T A B L E.

Chap. VI. Of Murder.

- I. **M**URDER, what.
 - II. **M** Hundred to be amerced.
 - III. What shall excuse the Hundred.
-

Chap. VII. Of Mischance.

- I. **A**ccidental Death, what.
 - II. **A** What shall be adjudged Deodands in such Cases.
 - III. *Felo de se*, what he forfeits.
-

Chap. VIII. Of Treason.

- I. **T**REASON in general, what.
 - II. **T** How divided and punished.
 - III. High Treason, what.
 - IV. Judgment in High Treason, what.
 - V. In smaller Offences, what.
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Chap. IX. Of Arsons.

WHAT Judgment shall be given against Burners of Houses, Sorcerors, Sodomites, and Here-ticks.

Chap. X. Of Burglars.

BUrglary, what, and how punished.

Chap. XI. Of Prisons.

- I. **I**Nquiry to be made of Breakers of Prisons.
- II. **W**hat is a Prison, and what shall be deemed a Breaking of it, and how the Offender shall be punished.
- III. What shall be forfeited thereby.
- IV. How those who had the Custody of the Prisoner shall be punished.
- V. Prisoners how to be treated.
- VI. What shall be done with their Lands and Chattels till their Tryal.
- VII. If acquitted, what.
- VIII. If condemned, what.
- IX. Where a Person dies in Prison, in what Manner the Coroner is to inquire of his Death.
- X. Of delivering the Gaol of the Prisoners.
- XI. Of Prisoners being impleaded, and impleading others.
- XII. Of the Gaoler's Fee.
- XIII. How far Contracts made by Prisoners whilst in Custody shall be binding.
- XIV. Approvers and Felons to be sent to the common Gaol.
- XV. What Punishment to be inflicted on those who have imprisoned others Maliciously.

Chap. XII. Of Outlaws.

- I. **I**Nquiry to be made of Persons outlawed for Felony, and of those who returned after Abjuration without Leave, and of those who receive them.
- II. Of the Oath of Frankpledge, and in what Manner those who are within it are to be answerable for each other.
- III. Who to be answerable for Strangers.
- IV. Of Hue and Cry after Felons according to the Stat. of Winchester.
- V. What forfeited by Flight.
- VI. Death of a Man when and how to be presented.
- VII. The Principal to be demanded before any Proceeding against the Accessary, and in Default of Appearance, when to be outlawed.
- VIII. The Judgment in Outlawry, and the Disabilities and Forfeitures incurred thereby.

Chap. XIII. Of Inlawry or being restored to the Law.

- I. **I**Nlawry (or being restored to the Law) is sometimes of Right, sometimes of Favour; and where of Favour, what the Party is to do, and in what Respect a Pardon will avail him.
- II. In what Cases Inlawry is to be granted of Right.
- III. The Writ to the Sheriff to make Proclamation thereof, and to what the Party shall be restored.
- IV. The Punishment for procuring Persons to be outlawed in any other County than where the Fact was committed.

T A B L E.

- V. Of erroneous Outlawries, and who to be punished in such Cases.
VI. Of Abjurations taken in the Absence of the Coroner.
VII. Of Alienations made by Felons convict, and how avoided.
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Chap. XIV. Of Rape.

RAPE, what, and the Judgment therein.

Chap. XV. Of Larcenies.

- I. **G**RAND Larceny, what, and where there is fresh Suit, and the Thief taken with the Manouyre, in what Manner he shall be tried and condemned.
II. How Proceedings shall be, where no fresh Suit.
III. If the Prisoner pleads Property in the Things stolen and vouches others to Warranty, the Method to compel the Vouchee's Appearance.
IV. If the Vouchee enters into Warranty, how the Suit shall be then, and what Judgment shall be given where the Vouchee prevails, and what where he is cast.
V. If the Prisoner cannot vouch any particular Person, but says he bought the Thing challenged at such a Fair, what Method is then to be taken, and what Judgment given in case he is acquitted.
VI. For Robbery, Cheating, &c. how the Offender shall be proceeded against, and what Judgment given.

What

T A B L E.

VII. What Judgment shall be given in petty Larceny for stealing Sheaves of Corn, or Poultry.

VIII. Cut-purses, their Punishment.

Chap. XVI. Of Abjurations.

I. **T**HE Coroner to go to the Place of Sanctuary and take the Confession of the Felon, and if he will neither confess, nor come out of Sanctuary, what Forfeitures he incurs.

II. If he abides above forty Days in the Sanctuary, the County to be charged with him, and he accounted as a Felon.

III. If he confesses the Felony and prays to abjure the Realm, what protection he is intitled to, and who is to have the charge of him.

IV. The Form of the Oath of Abjuration.

V. The Port to be assigned him, and how he is to demean himself in his Passage, and when he arrives there.

VI. If he abides in the Sanctuary above forty Days, to be deemed as a Felon attainted, and interdicted from all Society and Sustenance.

VII. If the Abjuration was thro' Fear, and it afterwards comes out that the Party was not guilty of any Felony, he may return.

VIII. All Abjurations taken before any other than a Coroner are void.

IX. In Abjurations for Offences not Felony, no Forfeiture of Land or Chattels.

Chap.

T A B L E.

Chap. XVII. Of Treasure-trove, Wrecks, Waifs, Estrays, &c.

- I. **O**F Treasure-trove, the Coroners Duty herein, to whom it belongs, and the Punishment for carrying it off.
 - II. As to Things lost, in what Cases the Owner, and in what the Finder shall be entitled to them.
 - III. Waifs and Estrays, where they shall belong to the Lord of the Franchise, where not; and if the Lord is guilty of a tortious Detainer, what Remedy, and Punishment.
 - IV. As to Wrecks, the Statutes to be observed.
 - V. Sturgeons and Whales taken within the Realm, what Part shall belong to the King, what to the Queen.
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Chap. XVIII. Of the Rights or Prerogative of the King.

- I. **T**O Inquire what Churches, religious Houses and Hospitals are of the King's Patronage; what antient Demesne Lands, and what Escheated, or purchased Lands, belonging to the Crown, are in the King's Hands, or in the Hands of other Persons; who hold them, and what they are severally worth; and as to Demesne Lands in the Hands of others, to inquire how and by whom they were alienated, and who are in Possession of them.
- II. Of Fees, of the Advowsons of Churches, and of Hundreds which used to be held of the King in Chief but are not now.

T A B L E.

- III. How many Farms the Sheriff rents of the Crown yearly, and how many Hundreds are in the Hands of the Crown, what each Hundred is worth, and and what the Bayliffs annually pay for them.
- IV. What *Aumones* and Serjeanties are due to the King by whom, and how long withheld.
- V. Whether Suits due at the King's County Courts, Hundred Courts, Manor Courts, Sheriffs Turns, and Views of Frankpledge, and at the King's Mills have been fully performed ; if neglected, from what Time, and by whom.
- VI. What Escheats are fell to the Crown, what Lands of Normans and of Felons who held of the King in chief have been alienated since the Commission of their Felonies ; and what Lands and Tenements held by Felons of others have been in like manner alienated without first compounding with the King for the Year and Waist ; who hold them, from what Time, and what is their yearly Value.
- VII. What Earldoms, Baronies, Knights Fees, Grand and petty Serjeanties have been severed without the King's Licence ; how they are held, who holds them, and of whom.
- VIII. What Arrears of Services are due, what Wardships, Marriages, Homages, Reliefs and Heriots have been withheld from the Crown, and what Fees those held who married without the King's Leave, and to whom they are married and what the yearly Value of their Lands amount to.
- IX. What Purprestures have been made upon the King's Land and Franchises, and the Method of Proceeding where by fresh Force.
- X. How, where the Deforcesor pleads the Seisin of his Ancestor, and the Manner of varying the Count where the Demand is made of Things appurtenant to the Crown, and where not.
- XI. How the Proceedings shall be for Suits withheld.

How

T A B L E.

- XII. How for Fees severed.
 - XIII. How for Wardships and Marriages detained.
 - XIV. The King's Declaration in what Cases he is intitled to the Mariage of the Daughters or Widows of his Tenants, and the Penalties incurred by either Males or Females marrying without his Leave.
 - XV. The Judgment in Purprestures.
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Chap. XIX. Of Franchises.

- I. **T**O inquire what Persons claim any Franchises in the County, and what such Franchises are.
 - II. The Manner of Proceeding in such Inquiry, and the Judgment where the Usurpation was by the Defor- ceant himself.
 - III. The Method of Proceeding where the Defor- ceant pleads that the Ancestor died seised, and of respit- ing the Judgment to the Determination of the King and his Counsel.
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Chap. XX. Of Wrongs of various Kinds.

- I. **T**O inquire what Persons have built Castles, Fort- lets, or Houses *kernelled*, without the King's Licence, and to seize or demolish such as have been built without it.
- II. What Bridges, Causeways, and common Highways have been destroyed, or are in bad repair; who are to repair them, and what Remedy, where certain Te- nements are chargeable with the Repairs, and what where not.
- III. What Gallows, Pillory, or Tumbrel, have been erected without Warrant, and the Judgment herein.

T A B L E.

- IV. What Persons other than the King's Justices or Coroners hold Pleas of Felony, and of notorious Trespases.
- V. Who those are who hold Pleas *de vetito namio*, or of debt exceeding 40s. or of Trespas exceeding that Sum, without the King's Writ.
- VI. Concerning those who have the Franchises of View of Frankpledge and of Infangthief, yet do not keep the Instruments of Punishment.
- VII. Concerning those who have turned into a Warren Lands which they ought not.
- VIII. Concerning those who have exercised their Franchise in a larger Manner than they ought.
- IX. Concerning those who take Fines for *Beaupleader*, and hold Pleas of Matters not within their Jurisdiction.
- X. Concerning those who have aggrieved the People by Distresses contrary to the Statutes, and the Judgment herein.
- XI. Concerning those who have detained Prisoners above a Day and a Night in any other than the common Gaol : and whether any one who died in Prison was buried without View of the Coroner, and the Punishment for such Offences.
- XII. Concerning public Nufances, and the Persons guilty of them ; concerning those who have neglected to watch according to the Statute of Winchester ; concerning Land-marks and Boundaries removed, and the Punishment for such Offences.
- XIII. Concerning those who prevent the Execution of the Judgments of the King's Courts, and their Punishment.
- XIV. Concerning Lands alienated in Mortmain, and the Judgment herein.
- XV. Concerning false Weights and Measures.
- XVI. Concerning Clerks who hold Plea of Matters not within their Jurisdiction, and concerning those who out of Malice summon the same Person to appear at different

T A B L E

different Places at one and the same time, and the Punishment of such Offenders.

XVII. Concerning those who take Theft bote——Tanners——Butchers——White-tawers——Forestallers, and all others who offend against the Statutes——concerning false Messengers, and devisors, and Reporters of false Rumours; concerning Sheep-shealers and Shearers; concerning those who course in others Warrens without Leave; and concerning Burglary and Bloodshed since the last Eyre.

XVIII. Concerning those who made Default the first Day of the Eyre, and their Punishment.

XIX. Concerning those who alienated their Tenements against the Eyre to prevent their being summoned on Juries and Inquests.

XX. Concerning Customs against the common Law, and the Prohibition of them.

Chap. XXI. Of the King's Officers.

I. **T**O Inquire what Lands have been seised by the King's Escheators since the last Eyre, the Value, &c.

II. What Waste has been committed by them in Parks, Fishponds, Warrens and Woods, and what such Waste amounts to.

III. What Effects were found in Tenements seised by them to the King's Use.

IV. How much they have taken for endowing Widows; for suffering Infant Heirs to abide with their Mothers; for making insufficient Extents——for certifying Wardships and Marriages to be under the real Value——for Concealments; and for suffering false Inquests to pass upon the Ages of the King's Wards; In what Court such Presentments shall be inrolled and determined.

To

T A B L E

- V. To inquire what Fees are taken by Coroners and their Clerks, and of Frauds committed by them.
- VI. Of Sheriffs and other Officers who have concealed Felonies committed in their Bailiwicks, or who have let to Mainprise Prisoners who were not intitled to it, and *vice versa*.
- VII. What Prisoners or Provors have made their Escape since the last Eyre and out of whose Custody, what Lands and Chattels they had, and what became of them, and how the Sheriff shall be punished for such Escapes.
- VIII. Of Goals, what Parts want repairing, who ought to repair them, and thro' whose Default the Escapes happened.
- IX. Concerning Sheriffs and others who compelled Provors to appeal the Innocent, or hindered them from appealing the Guilty, and how such Offence is to be punished.
- X. Concerning Sheriffs who let their Hundreds to farm to Persons they know are not responsible, and how they are punishable.
- XI. Concerning Sheriffs and Bailiffs who have levied various kinds of Amerciaments without Process from the Exchequer, and how punishable.
- XII. Concerning Sheriffs who have made People pay Fines that they might not be distrained on to take the Order of Knighthood, or have maintained Suits, or procured false Inquests, or levied Amerciaments twice over, or too much, or have procured Writs for Removal of Coroners upon false Suggestions, or have detained in Prison any man whom he ought to have brought before the King or his Justices; and the respective Punishments for such Offences.
- XIII. Whether any Sheriff through Malice took any outrageous or unreasonable Distress, whether such Distress was driven out of the Fee, whether such Beasts were not suffered to be supported at the Cost of the Owners, and whether they were impounded above 15 days; and how such Offences are to be punished.

T A B L E.

XIV. Concerning those who suffered improper Pleas to be pleaded in Court Christian, or suffered a Layman to take an Oath before the Ordinary.

XV. Concerning those who took Fines for Redisseisins, Surcharges, or Purprestures, or who took Bribes for suffering any Wrong to be done to the King.

XVI. Concerning Sheriffs or Bailiffs who summon more People upon Inquests than are necessary, or put improper Persons on Inquests.

XVII. Concerning those who make *Scotales* and such-like to the Grievance of the People.

XVIII. Concerning Sheriffs who have held the Turn, or Hundredors the View of Frankpledge, oftener than twice a Year; and of Sheriffs who have not answered for the true Issues, and how such Offences shall be punished.

XIX. Concerning Justices, Sheriffs and others who maintain Suits, or bring Writs of Right in their Courts to increase the Business of it, or amerce People in an undue Manner.

XX. Concerning wrongful Seizures for Tolls, and how punished.

XXI. No Judgment to pass on the King's Justices without the King.

XXII. Concerning Purveyance taken by Constables of the King's Castles and others, without lawful Authority.

XXIII. Concerning Sheriffs and others who are burthensome to religious Houses by bringing too great a Retinue with them, &c.

XXIV. Concerning the King's Serjeants and Attornies who suffer any great Lord to continue in Seisin of any Franchises, &c. which belong to the King, and how such Offence shall be punished.

XXV. Concerning those who remit Fines due to the King, put them out of the Rolls, or omit inserting them; and the Punishment for such Offence.

Con-

T A B L E.

- XXVI. Concerning the King's Ministers who have received Presentments to Churches while under Litigation, and how such shall be punished; and whether they have been guilty of Champerty, or of disturbing any Man's Right; what Fees they take, and of whom.
- XXVII. Concerning Clerks of the Chancery, King's Bench, Common Bench, and Exchequer; Chyrographers, and Cryers of the Courts; whether any of them take more than their lawful Fees, and how the Offenders are to be punished.
- XXVIII. Concerning the Clerks of the Justices in Eyre; whether they take more than their due Fees, or have delayed any Inrollment, or aggrieved any one, and how they are to be punished.
- XXIX. To inquire what Confederacies there are between any of the King's Officers and the Jurors, or one Neighbour and another to the Hindrance of Justice, and what Persons thrust themselves upon Inquests, and who those are who it is suspected would be guilty of Perjury, and how such Offenders shall be punished.
- XXX. Concerning Cloth made out of the Realm, and afterwards sold here not of the right Assize; the Quantity sold, by whom, and for what, and who was appointed to Seise it.
- XXXI. Concerning Wines sold in Vessels not of due Content, and who sold them—of the King's Prisage of Wines, what Quantity has been taken and by whom, and whether sold without the King's Orders.
- XXXII. Concerning all sorts of Fish, Spicery, Averdu-pois, and all Manner of Prizes since the last Eyre, and the Value of each Prize.
- XXXIII. Concerning the King's Customs of Leather and Wool, who were the Collectors, how many Sacks they let pass without paying Custom, and how much the Custom on each Commodity annually amounts, and in what Court the Articles of Cloth, Wines, Prisages and Customs shall be determined.

T A B L E

Chap. XXII. Of Appeals.

- I. **H**OW Offences are to be punished at the Suit of the Party.
- II. An Appeal, how defined, and for whom it lies, and for whom not.
- III. Felony, the different Species of it.
- IV. Appeal of Treason, for what it lies.
- V. To whom the Informrtion of it is to be given, by whom, and within what Time, and how the accused is to be dealt with.
- VI. By whom the Appeal is to be drawn, and the Form of it when the Appellant tenders Battel, and when not.
- VII. No Attorney or Essoyn to be allowed.
- VIII. If the Appeal be abated for Want of Form, &c. how the Serjeant who drew it shall be punished.
- IX. In what Manner the Appellee is to make his Defence, and how he, or the Serjeant he employed shall be punished, if he makes an improper Defence.
- X. Of Exceptions to the Appeal.
- XI. How the Appellant shall be punished where the Appeal is abated, or he has withdrawn his Appeal.
- XII. How the King shall proceed *ex officio*, the Appeal being abated.
- XIII. If Battle be waged, what Steps are to be taken before it be joined.
- XIV. Of the Parties giving Security, and appointment of a Day for the Combat.
- XV. Of rehearsing the Appeal when the Parties appear in Court, and the several Oaths to be taken by the Appellant and Appellee there.
- XVI. Of conducting them to the Place of Combat, and their Oath there.

T A B L E.

XVII. Proclamation of Silence and Punishment of Breach of it.

XVIII. How the Combatants are to be armed.

XIX. If the Appellee defend himself till the Stars appear what Judgment is to be given.

XX. What to be done where the Defendant confesses the Felony before he is attainted, and appeals others as accessory.

XXI. What Judgment shall be given where the Appellee is vanquished, and how the Appellant is to be rewarded.

XXII. For what other Crimes Appeals may be brought on behalf of the King, and what Judgement shall be given.

Chap. XXIII. Of Appeals of Homicide.

I. **W**HO shall have an Appeal of Death, within what time it must be brought, and in what County.

II. What the Appellant is to do at the first County Court, and in Case of denial of Justice to either Party, what Remedy they have.

III. No one to be detained in Prison or proceeded against as an Accessary until Attainder or Outlawry of the Principal, and an Attainder of the Principal shall be an Acquittal of the Accessaries.

IV. How the Plaintiff is to set forth his Appeal.

V. The Appellees Defence.

VI. What Judgement to be given where the appellant is nonsuited, and how to proceed where the Appellant dies or is prevented from prosecuting his Appeal.

VII. In what Cases the Appellee may be admitted to mainprise.

T A B L E

- VIII. Acquittal at the King's Suit, not to bar another Person of his Action within the Year and Day.
- IX. Pleas in bar to the Action, and Judgement of Acquittal.
- X. If Defendant can take no Exception to the Appeal, how he is to defend himself; and what Punishment is to be inflicted on him in case he refuses to plead.
- XI. The Judgment in Murder.
- XII. In what Cases a Woman may bring an Appeal of Death.
- XIII. In what Cases she may bring an Appeal of Rape, and what shall be a sufficient Excuse for the Defendant in such Appeal.
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Chap. XXIV. Of Appeals of Robbery and Larceny.

- I. **W**H O may bring these Appeals, within what Time, and in what County.
- II. The Form of the Appeal.
- III. How the Appellee may defend the Appeal.
- IV. If he pleads Property, how it shall be tried, and what Judgment shall be given.
- V. If he vouches another to Warranty, and the Vouchee enters into Warranty, how the Proceedings shall be in such Case.
- VI. What to be done if the Vouchee refuses to enter into Warranty.
- VII. If the Warranty be by Collusion, what Judgment shall be given therein.
- VIII. Within what Time Appeals of Larceny and Robbery are to be brought, and how the Owners of the Things may proceed in Trespass instead of Felony, if they think proper.
- IX. If the Appellee does not appear, he is to be outlawed.

When

T A B L E.

- X. When he appears, what Defence he may make, and if attainted, what Judgment shall be given.
- XI. The Principal being convicted, the Appellant may proceed against the Accessaries.
- XII. When there is one Appellee, and several Appellants, and *vice versa*, how Battle is to be joined.
- XIII. How far the Wife or Concubine of a Felon shall be excused.
- XIV. If a Woman be enseint, Execution to be respited.
- XV. If Appellees turn Approvers, and appeal others, how the Proceedings shall be before the Coroner.
- XVI. If the Approver proves his Appeal, he shall be pardoned.
- XVII. If he fails, what Judgment shall be given against him, and how the Appellees according to their Characters, shall be proceeded against at the King's Suit.
- XVIII. Persons indicted of Felony thro' Hatred, what Remedy they have.
- XIX. None to suffer Death for stealing Pigeons, &c. except out of Houses, &c.
- XX. No Appeal lies where the Damage is under 12d. or in Trespass.
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Chap. XXV. Of Appeals of Mayhems.

- I. **W**HAT Judgment shall be given in Appeal of Mayhem.
- II. What, upon an Indictment of Mayhem.
- III. What shall be deemed a Mayhem.

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